

EXHIBIT “D”

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JENNIFER P. SCHWEICKERT,)
)
 Plaintiff,)
)
 vs.) Case Number:
)
 HUNTS POINT VENTURES, INC., HUNTS) 13-CV-675
 POINT VENTURE GROUP, LLC; CHAD)
 RUDKIN and ELIZABETH RUDKIN, and)
 their marital community comprised)
 thereof; JOHN DU WORS and AMBER)
 DU WORS, and their marital)
 community comprised thereof; and)
 DOES 1-4,)
)
 Defendants.)

DEPOSITION UPON ORAL EXAMINATION
OF
JOHN DU WORS
VOLUME I

1:06 p.m.
July 18, 2014
777 108th Avenue NE, Suite 2170
Bellevue, Washington

Lauren G. Harty, RPR, CCR #2674
Court Reporter

John Du Wors

July 18, 2014

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<p>1</p> <p>2 APPEARANCES</p> <p>3</p> <p>4</p> <p>5 FOR PLAINTIFF: MR. MARK D. KIMBALL</p> <p>6 MR. BRANDON P. WAYMAN</p> <p>7 MDK Law Associates</p> <p>8 777 108th Avenue N.E., Suite 2170</p> <p>9 Bellevue, Washington 98004</p> <p>10 425.455.9610</p> <p>11 mark@mdklaw.com</p> <p>12</p> <p>13</p> <p>14 FOR DEFENDANTS DU WORS:</p> <p>15 MR. SAM B. FRANKLIN</p> <p>16 Lee Smart</p> <p>17 701 Pike Street, Suite 1800</p> <p>18 Seattle, Washington 98101-3929</p> <p>19 206.624.7990</p> <p>20 sbf@leesmart.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXHIBIT INDEX</p> <p>2 EX# DESCRIPTION PAGE</p> <p>3 8 8/18/2010 "INTELLECTUAL AND GENERAL 56</p> <p>4 INTANGIBLE PROPERTY PURCHASE AND SALE</p> <p>5 AGREEMENT."</p> <p>6 9 1/23/2011 patent interest assignments. 59</p> <p>7 10 4/21/2011 "Promissory Note and Joint 60</p> <p>8 Participation Agreement."</p> <p>9 11 4/21/2011 "Promissory Note and Joint 63</p> <p>10 Participation Agreement."</p> <p>11 12 Email thread ending 4/9/2013 from 76</p> <p>12 Jennifer Schweickert to Mark Phillips.</p> <p>13 13 8/27/2012 "Meeting Minutes." 81</p> <p>14 14 3/1/2011 "CERTIFICATE OF FORMATION." 85</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 EXAMINATION INDEX</p> <p>2 ATTORNEY PAGE</p> <p>3 BY MR. KIMBALL: 5</p> <p>4 EXHIBIT INDEX</p> <p>5 EX# DESCRIPTION PAGE</p> <p>6 1 4/30/2010 "ARTICLES OF INCORPORATION OF 15</p> <p>7 HUNTS POINT VENTURES, INC."</p> <p>8 2 5/25/2010 letter "Re: Engagement Letter 18</p> <p>9 and Security Agreement" to Mark Phillips</p> <p>10 from John Du Wors.</p> <p>11 3 6/9/2010 letter "Re: Our Agreement" to 20</p> <p>12 Hunts Point Ventures and Steve</p> <p>13 Schweickert from John Du Wors.</p> <p>14 4 5/2010 "ARTICLES OF AMENDMENT TO THE 22</p> <p>15 ARTICLES OF INCORPORATION OF HUNTS POINT</p> <p>16 VENTURES, INC."</p> <p>17 5 5/20/2010 "STOCK SUBSCRIPTION AGREEMENT." 25</p> <p>18 6 12/20/2013 "DECLARATION OF STEPHEN JAMES 29</p> <p>19 SCHWEICKERT IN OBJECTION TO JOYCE</p> <p>20 SCHWEICKERT'S MOTION FOR RELIEF FROM</p> <p>21 AUTOMATIC STAY."</p> <p>22 7 5/2010 "LIMITED LIABILITY COMPANY 48</p> <p>23 AGREEMENT OF HUNTS POINT INTELLECTUAL</p> <p>24 PROPERTIES, LLC."</p> <p>25</p>	<p>1 JOHN DU WORS, being duly sworn, testified</p> <p>2 upon oath, as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. KIMBALL:</p> <p>5 Q. Can you state your name for the record,</p> <p>6 please?</p> <p>7 A. John Du Wors.</p> <p>8 Q. And could you spell the last name.</p> <p>9 A. D-U space capital W-O-R-S, as in Sam.</p> <p>10 Q. Mr. Du Wors, my name is Mark Kimball. I</p> <p>11 represent Jennifer Schweickert in this matter, and</p> <p>12 you're here today pursuant to a notice of deposition.</p> <p>13 I'm going to be taking your deposition today and</p> <p>14 asking you some questions. It'll be your obligation</p> <p>15 to answer those truthfully and completely.</p> <p>16 If you don't understand a question, please</p> <p>17 let me know, and I'll try to rephrase it. It will be</p> <p>18 my assumption that if you answer a question, that you</p> <p>19 did understand it.</p> <p>20 As you're probably well aware, you can take</p> <p>21 a break any time you need to. You just can't take a</p> <p>22 break while a question is pending.</p> <p>23 And, of course, as you probably also are</p> <p>24 familiar with, I'll do my best not to resume a</p> <p>25 question -- or advance on with another question until</p>

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<p>1 you're done answering, and if -- I would ask you to do</p> <p>2 the same, since the court reporter can only take down</p> <p>3 one person at a time.</p> <p>4 Do you understand those -- those terms?</p> <p>5 A. I believe that I understand the plain</p> <p>6 language meaning of what you're saying to me.</p> <p>7 Q. Thank you.</p> <p>8 What is your current residence address?</p> <p>9 A. I'm not going to tell you that without a</p> <p>10 protective order in place.</p> <p>11 MR. FRANKLIN: If you -- yeah. Mr. Du Wors</p> <p>12 is very privacy oriented, and I think he will be</p> <p>13 willing to disclose it, but it's got to do with -- we</p> <p>14 would have to agree that we'd do it with a protective</p> <p>15 order so that it's not disseminated outside of this</p> <p>16 and -- except as it becomes necessary for the purposes</p> <p>17 of the case. I assume that should not be a limitation</p> <p>18 you would object to.</p> <p>19 MR. KIMBALL: We would have no problem</p> <p>20 agreeing to a protective order on those kinds of</p> <p>21 issues. Maybe what we should do is revisit that</p> <p>22 question at the end of --</p> <p>23 MR. FRANKLIN: Okay.</p> <p>24 MR. KIMBALL: -- the deposition.</p> <p>25 MR. FRANKLIN: Fair enough.</p>	<p>1 Q. What year did you graduate?</p> <p>2 A. 2000.</p> <p>3 Q. And what law school did you attend?</p> <p>4 A. Seattle University.</p> <p>5 Q. Did you receive a JD?</p> <p>6 A. I don't know what you mean by a JD.</p> <p>7 Q. Juris doctorate.</p> <p>8 A. I did receive a juris doctorate.</p> <p>9 Q. And what year was that?</p> <p>10 A. That was in 2003.</p> <p>11 Q. When did you become admitted to practice in</p> <p>12 the state of Washington?</p> <p>13 A. I assume you mean admitted to practice law.</p> <p>14 Q. Yes.</p> <p>15 A. I don't recall the specific date.</p> <p>16 Q. Do you recall the year?</p> <p>17 A. I do.</p> <p>18 Q. What year was it?</p> <p>19 A. It was in 2003.</p> <p>20 Q. Are you currently an active member of the</p> <p>21 Washington State Bar Association?</p> <p>22 A. I believe so.</p> <p>23 Q. Are you currently working with or affiliated</p> <p>24 with a firm known as Newman & Du Wors, LLP?</p> <p>25 A. Yes.</p>
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<p>1 MR. KIMBALL: Perhaps even do a second</p> <p>2 deposition today and stipulate on the record that it</p> <p>3 won't be published --</p> <p>4 MR. FRANKLIN: We can do it that way, Mark.</p> <p>5 MR. KIMBALL: Okay.</p> <p>6 MR. FRANKLIN: That would be fine.</p> <p>7 Q. (By Mr. Kimball) What's your current age?</p> <p>8 A. Thirty-six.</p> <p>9 Q. And are you married or single?</p> <p>10 A. Married.</p> <p>11 Q. And what is the name of your spouse?</p> <p>12 A. Amber Du Wors.</p> <p>13 Q. And when were you married?</p> <p>14 A. June 28th, 2008.</p> <p>15 Well, we had our wedding ceremony on</p> <p>16 June 28th, 2008. We didn't have a legally binding</p> <p>17 ceremony until later, I think November 28th of 2008.</p> <p>18 Q. Okay.</p> <p>19 And what college did you attend for</p> <p>20 undergraduate?</p> <p>21 A. The University of Washington.</p> <p>22 Q. And do you recall your major?</p> <p>23 A. I do.</p> <p>24 Q. And what was that?</p> <p>25 A. English literature.</p>	<p>1 Q. And are you an owner of an interest in that</p> <p>2 firm?</p> <p>3 A. No.</p> <p>4 Q. What is your relationship with Newman &</p> <p>5 Du Wors, LLP?</p> <p>6 A. I don't know what you mean by</p> <p>7 "relationship."</p> <p>8 Q. Are you a partner?</p> <p>9 A. Are you asking if I have a relationship that</p> <p>10 satisfies the legal criteria for a legally defined</p> <p>11 partnership?</p> <p>12 Q. No.</p> <p>13 A. Then I don't know what you're asking me.</p> <p>14 Q. Are you an employee of Newman & Du Wors,</p> <p>15 LLP?</p> <p>16 A. I understand myself to be an employee,</p> <p>17 without being able to tell you whether or not my</p> <p>18 relationship with that firm satisfies the criteria of</p> <p>19 an employ -- employment relationship under Washington</p> <p>20 law.</p> <p>21 Q. Do you receive a W-2 at the end of each</p> <p>22 year?</p> <p>23 A. No.</p> <p>24 Q. Did you receive a K-1 -- a Schedule K-1 at</p> <p>25 the end of 2013 for or associated with your work at</p>

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<p>1 Newman & Du Wors, LLP?</p> <p>2 A. No.</p> <p>3 Q. Is there an entity or a law firm known as</p> <p>4 Newman & Newman currently in existence?</p> <p>5 A. Known by whom?</p> <p>6 Q. Have you ever heard of a law firm called</p> <p>7 Newman & Newman?</p> <p>8 A. Yes.</p> <p>9 Q. Do you work for that law firm?</p> <p>10 A. Yes.</p> <p>11 Q. Are you a partner or principal in that law</p> <p>12 firm?</p> <p>13 A. What do you mean by "principal"?</p> <p>14 Q. An owner or part owner.</p> <p>15 A. No.</p> <p>16 Q. Prior to working for Newman & Newman did you</p> <p>17 work for any other law firms?</p> <p>18 A. Yes.</p> <p>19 Q. What were the names of those law firms?</p> <p>20 A. Hunter Molloy & Salcido.</p> <p>21 Q. What city was that located in?</p> <p>22 A. When?</p> <p>23 Q. I'm sorry?</p> <p>24 A. When?</p> <p>25 Q. Was it located in more than one city?</p>	<p>1 A. I did not do that.</p> <p>2 Q. When did you first hear about or learn about</p> <p>3 Hunts Point Ventures?</p> <p>4 A. I don't recall the specific date.</p> <p>5 Q. Do you recall the year?</p> <p>6 A. I believe that I recall the year, but I'm</p> <p>7 not a hundred percent confident that I have the year</p> <p>8 correct.</p> <p>9 Q. To the best of your recollection, what year</p> <p>10 do you believe you first learned about HPV or Hunts</p> <p>11 Point Ventures?</p> <p>12 A. 2010.</p> <p>13 Q. And who did you first deal with when you</p> <p>14 heard of Hunts Point Ventures on behalf of that</p> <p>15 company?</p> <p>16 A. As phrased, I don't understand your</p> <p>17 question.</p> <p>18 Q. Who brought --</p> <p>19 MR. KIMBALL: Strike that.</p> <p>20 Q. (By Mr. Kimball) Were you approached by an</p> <p>21 individual or did you meet with an individual about</p> <p>22 the company called Hunts Point Ventures, Inc.?</p> <p>23 A. When?</p> <p>24 Q. When you first learned of it.</p> <p>25 A. You're asking if I was approached by an</p>
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<p>1 A. No.</p> <p>2 Q. When you worked for Hunter Molloy & Salcido,</p> <p>3 what city was it located in?</p> <p>4 A. Pasadena.</p> <p>5 Q. Are you an active member of the State of</p> <p>6 California Bar Association?</p> <p>7 A. What do you mean by "active"?</p> <p>8 Q. Licensed to practice law in California?</p> <p>9 A. Yes.</p> <p>10 Q. And when did you first become admitted to</p> <p>11 practice in California?</p> <p>12 A. I don't recall the specific date.</p> <p>13 Q. Do you recall the year?</p> <p>14 A. Yes.</p> <p>15 Q. And what was the year?</p> <p>16 A. 2004.</p> <p>17 Q. Have you ever heard of a company called</p> <p>18 Hunts Point Ventures, Inc.?</p> <p>19 A. Yes.</p> <p>20 Q. Did you participate or assist anyone in</p> <p>21 forming that -- that company?</p> <p>22 A. What do you mean by "form"?</p> <p>23 Q. Prepare articles of incorporation?</p> <p>24 A. I did not do that.</p> <p>25 Q. Did you ever prepare bylaws for the company?</p>	<p>1 individual during that time frame?</p> <p>2 Q. Yes.</p> <p>3 A. I'm sure that I was approached by</p> <p>4 individuals during that time frame.</p> <p>5 Q. Who was your first contact person associated</p> <p>6 with Hunts Point Ventures, Inc.?</p> <p>7 A. What do you mean by "associated with"?</p> <p>8 MR. KIMBALL: We're going off the record.</p> <p>9 (Discussion off the record.)</p> <p>10 MR. KIMBALL: Back on the record.</p> <p>11 Q. (By Mr. Kimball) Mr. Du Wors, how did you</p> <p>12 first hear about Hunts Point Ventures?</p> <p>13 A. Either from Mark Phillips or from Steve</p> <p>14 Schweickert.</p> <p>15 Q. And you -- that was in 2010?</p> <p>16 A. Correct.</p> <p>17 Q. When you were first con --</p> <p>18 A. Well, as I said, I believe so.</p> <p>19 Q. When you were first contacted about Hunts</p> <p>20 Point Ventures or heard of that company, whether it</p> <p>21 was Mr. Schweickert or Mr. Phillips, did they discuss</p> <p>22 with you what they were looking for in terms of your</p> <p>23 role with that company?</p> <p>24 A. I don't recall.</p> <p>25 Q. Was there ever a discussion between you and</p>

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<p>1 either Mr. Schweickert or Mr. Phillips about the 2 services that they would be asking you to provide for 3 that company? 4 A. I'm sure that subject was broken up over a 5 period of time as the services the law firm performed 6 for Hunts Point changed. 7 Q. Okay. 8 What were the initial services that you or 9 your law firm provided for Hunts Point Ventures? 10 A. Transacting an assignment of intellectual 11 property from Mark Phillips to Hunts Point Ventures. 12 Q. And do you recall more specifically what 13 kind of intellectual property that was? 14 A. Two issued patents, several pending patent 15 applications, and several excerpts of code bases that 16 may or may not have been the subject of either 17 copyright protection or trade secret protection. 18 Q. And I believe you indicated a few moments 19 ago that you did not draft the articles of 20 incorporation for Hunts Point Ventures, correct? 21 A. I did not. 22 Q. And you did -- also, similarly, you did not 23 draft any bylaws for that company. Is that also 24 correct? 25 A. I did not.</p>	<p>1 Q. Do you recall who the initial shareholder -- 2 MR. KIMBALL: Strike that. 3 Q. (By Mr. Kimball) Do you recall who the 4 shareholders were in Hunts Point Ventures, Inc., at 5 the first time you learned of the identity of 6 shareholders in that company? 7 A. I believe I was told by Steve Schweickert 8 that the shareholders were Steve Schweickert to the 9 tune of 92 percent, with 8 percent ownership interest 10 being held by Joyce Schweickert. 11 Alternatively, I also perhaps recall being 12 told at that time or around that time that Steve 13 Schweickert and Joyce Schweickert each owned 14 50 percent of it. I think I may have been told both 15 those things at different times during that early 16 phase when I first became familiar with the company. 17 Q. Do you have an under -- did you have an 18 understanding of what the purpose of Hunts Point 19 Ventures was as relayed to you by any representative 20 thereof? 21 A. Well, the only representative of Hunts Point 22 Ventures during that time period that I was aware of 23 was Steve Schweickert, and initially I understood that 24 Hunts Point Ventures was going to try to commercially 25 deploy some kind of technology asset, although I -- if</p>
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<p>1 Q. Okay. 2 Did you draft or participate in the drafting 3 of any shareholder agreements for Hunts Point 4 Ventures? 5 A. I didn't. 6 I -- much later I may have drafted the 7 assignment of ownership interest -- the assignment of 8 50 percent ownership interest from Steve Schweickert 9 to Chad Rudkin. I also may have participated in the 10 drafting of the acquisition of an additional 11 50 percent ownership interest by Chad Rudkin from 12 Steve Schweickert, but that was years later, I believe 13 in the summer of 2012. 14 (Marked Deposition Exhibit No. 1.) 15 Q. (By Mr. Kimball) Mr. Du Wors, you've been 16 handed a document marked as Exhibit 1. Have you ever 17 seen this document before? 18 A. I may have glanced at it once or twice in 19 the past, but I don't know -- I don't have an 20 independent recollection of whether or not I've ever 21 seen it. 22 Q. All right. 23 A. I have some vague recollection of possibly 24 having seen it in the materials we kept on file for 25 Hunts Point Ventures.</p>	<p>1 I understood correctly, no one ever had -- no one at 2 Hunts Point Ventures ever decided what that would be 3 or even had a clear idea of what it would be. 4 Q. Do you recall when you initially became 5 aware of Hunts Point Ventures, Inc., who the people 6 were on the board of directors of the company? 7 A. I am only aware of there having been one 8 director of Hunts Point Ventures prior to the 9 assignment of interest to Chad Rudkin. 10 Q. Okay. 11 And who was the one director that you 12 recall? 13 A. Steve Schweickert. 14 Q. To your knowledge, were the articles of 15 amend -- the articles of incorporation which are 16 marked as Exhibit 1 ever amended? 17 A. I'm not aware of any such amendment. 18 Q. Okay. 19 Did Hunts Point Ventures, Inc., execute a 20 retainer or engagement agreement with you or with your 21 office? 22 A. Yes. 23 Q. And was it Mr. Schweickert who signed on 24 behalf of the company? 25 A. I believe there were two retainer</p>

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<p style="text-align: right;">Page 18</p> <p>1 agreements, and in both instances I believe they were 2 signed by Steve Schweickert. 3 Q. Did each of the agreements talk about the 4 scope or nature of work that you or your office would 5 be performing for the company? 6 A. Yes. 7 (Marked Deposition Exhibit No. 2.) 8 Q. (By Mr. Kimball) You've been handed a 9 document marked as Exhibit 2. Could you take a look 10 through that document and let me know if you've ever 11 seen it before? 12 A. I have. 13 Q. And, in fact, is this one of the two 14 retainer agreements that you referred to a moment ago? 15 A. No. This is a retainer agreement with Mark 16 Phillips. 17 Q. All right. 18 Can you tell me in your own words the 19 subject matter of the engagement letter and security 20 agreement marked as Exhibit 2? 21 A. To represent Mark Phillips in an assortment 22 of civil litigation. 23 Q. Okay. 24 And what -- do you recall what cases those 25 were?</p>	<p style="text-align: right;">Page 20</p> <p>1 it would have been pursuant to this and two other 2 engagement agreements and a conflict waiver that I 3 entered into with Hunts Point Ventures. 4 Q. Okay. 5 (Marked Deposition Exhibit No. 3.) 6 Q. (By Mr. Kimball) Mr. Du Wors, you've been 7 handed a document marked as Exhibit 3. Have you ever 8 seen that document before? 9 A. I have. 10 Q. And is this one of the Hunts Point Ventures 11 engagement or retainer agreements that you referred to 12 a couple of minutes ago? 13 A. It is. 14 Q. Okay. 15 And I thought you indicated that there were 16 two with Hunts Point Ventures; is that correct? 17 A. I did. 18 Q. Okay. 19 So there would be another document in 20 addition to this? 21 A. There is. 22 Q. And do you recall what the nature of the 23 work you would be doing pursuant to Exhibit 3 would 24 be? 25 A. It says right here I was going to represent</p>
<p style="text-align: right;">Page 19</p> <p>1 A. As I sit here, I recall that we were 2 representing him in the Arnold case, his case against 3 MOD Systems, the MOD Systems case against Mark 4 Phillips, a computer fraud and abuse act case that 5 Mark Phillips wanted to bring on behalf of his 6 corporation, A Dot, against various defendants. And 7 those are all the cases that I recall as I sit here. 8 Q. And, in fact, pursuant to Exhibit 2 were you 9 retained or paid money to become retained by 10 Mr. Phillips? 11 A. I don't think Mark Phillips ever paid me any 12 money. He might have paid me an initial \$5,000. 13 Beyond -- 14 Q. Did -- 15 A. Beyond that, I don't -- I don't think he did 16 pay me anything. 17 Q. Did anyone pay you or your firm pursuant to 18 Exhibit 2 on Mr. Phillips' behalf? 19 A. I don't know that it was pursuant to 20 Exhibit 2, but it was pursuant to my retention Hunts 21 Point Ventures paid me to represent Mark Phillips both 22 in his civil litigation and in his criminal 23 litigation. 24 Q. Okay. 25 A. But I -- you know, properly characterized,</p>	<p style="text-align: right;">Page 21</p> <p>1 Mark Phillips in an assortment of civil litigation, 2 including the Arnold case, the -- the MOD Systems 3 cases, and the A Dot case. 4 Q. And it also seems to reference -- or -- 5 excuse me -- A Dot Corporation v. Anthony Bay. And 6 that was -- it appears to have been filed in the 7 Western District Federal Court of Washington; is that 8 correct? 9 A. I don't know. I didn't file that case. 10 Q. Okay. 11 Did you represent him in that case? 12 A. I don't believe I ever appeared in that 13 matter. 14 Q. Was there a reason why Hunts Point Ventures 15 retained you to represent Mark Phillips? 16 A. Because Mark didn't have the funds to retain 17 me on his own. 18 Q. When billings or statements of account were 19 created and sent for the work you were doing pursuant 20 to Exhibit 2 and Exhibit 3, do you recall if they were 21 billed to Mark Phillips or to Hunts Point Ventures? 22 A. At minimum they were billed to Hunts Point 23 Ventures. I believe Mark may also have received 24 courtesy copies. 25 Q. And I believe you indicated a minute ago,</p>

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<p>1 just to clarify, that you did not -- you do not recall 2 representing Mr. Phillips in the A Dot Corporation v. 3 Anthony Bay case; is that correct? 4 A. I did not say that. I said I don't believe 5 I ever appeared in that case. 6 Q. Okay. 7 Did you do work in that case on behalf of 8 Mr. Phillips? 9 A. To the extent that I analyzed it. 10 Q. And by "analyzed it" you mean you looked at 11 the allegations, the pleadings, and then discussed 12 those with Mr. Phillips? 13 A. I have a very vague recollection of having 14 done that. I certainly remember discussing it with 15 Mr. Phillips. I don't have a very -- I don't have a 16 clear recollection of having reviewed the pending 17 complaint in that case -- 18 Q. All right. 19 A. -- but Mr. Phillips described his theories 20 on behalf of A Dot to me a number of times. 21 (Marked Deposition Exhibit No. 4.) 22 Q. (By Mr. Kimball) You've been handed a 23 document marked as Exhibit 4, which is titled articles 24 of amendment to the articles of incorporation of Hunts 25 Point Ventures, Inc. Do you see that document?</p>	<p>1 Q. Do you know if these articles of amendment 2 were ever filed with the Secretary of State of the 3 State of Washington? 4 A. I would be speculating. 5 Q. So you don't know? 6 A. I don't have an independent basis of 7 personal knowledge to respond to that question. 8 Q. Was Mark Phillips ever a shareholder of 9 Hunts Point Ventures? 10 A. Based on the information that I have ever 11 received, the answer would be no. 12 Q. And what information was that? 13 A. I'm sure I couldn't tell you all of the 14 information, because that would be calling upon me to 15 tell you all the documents I've ever seen and the 16 conversations I've ever had in relation to the com -- 17 the company, but essentially my understanding has 18 always been from Steve Schweickert and Mark Phillips 19 and Chad Rudkin and Doug Lower that prior to the 20 transfer of interest to Chad Rudkin the only 21 shareholders in Hunts Point Ventures were initially 22 Steve Schweickert and Joyce Schweickert and then as of 23 about January 2011 just Steve Schweickert, which 24 continued to be the case for some time. 25 Q. And then was there a subsequent transfer to</p>
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<p>1 A. I do. 2 Q. Did you prepare this document? 3 A. I did not. 4 Q. Okay. 5 Did you discuss with Mr. Schweickert or 6 anyone who did prepare this document? 7 A. Ask me that question again? 8 Q. Did you discuss with Mr. Schweickert or 9 anyone else the identity of the person or company who 10 prepared this document? 11 A. My assumption would be that it was 12 Cairncross & Hempelmann, because Cairncross & 13 Hempelmann performed all of Hunts Point Ventures' 14 corporate governance work during this time period. 15 Q. And what time period are you referring to? 16 A. The late spring and early summer of 2010. 17 Q. Exhibit 4, at least this version of 18 Exhibit 4, has some blank lines in it for dates and 19 also does not appear to be signed by Mr. Schweickert. 20 Do you recall if you ever saw a document 21 similar to Exhibit 4 purporting to be articles of 22 amendment for Hunts Point Ventures, Inc., which was 23 signed by Mr. Schweickert? 24 A. I have no recollection of ever having seen 25 any such document.</p>	<p>1 Mr. Rudkins? 2 A. Mr. Rudkin, yes. 3 Q. Rudkin. I'm sorry. 4 And do you recall when that occurred? 5 A. I can only give you a general estimate 6 within a range, which is that I believe Mr. Rudkin 7 received his 50 percent interest initially in the late 8 spring or early summer of 2012. 9 Q. Do you recall if you or your office prepared 10 any documentation relating to that interest transfer? 11 A. I drafted that interest transfer -- 12 Q. All right. 13 A. -- I think. I think that I drafted it. 14 (Marked Deposition Exhibit No. 5.) 15 Q. (By Mr. Kimball) Mr. Du Wors, you've been 16 handed a document which is titled "STOCK SUBSCRIPTION 17 AGREEMENT." Could you take a look at that and let me 18 know if you've ever seen that before? 19 A. I have never seen this document before. 20 I've heard a lot about it, but this is the first time 21 anyone's ever showed it to me. 22 Q. When you say you heard a lot about it, what 23 have you heard more specifically? 24 A. Mark Phillips' allegations in his civil 25 litigation against my law firm.</p>

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<p>1 Q. All right.</p> <p>2 And what were the allegations specifically?</p> <p>3 A. Oh, I couldn't tell you all of them. I</p> <p>4 mean, have you read that complaint? It's tremendously</p> <p>5 lengthy.</p> <p>6 Q. Do you recall what the allegations were</p> <p>7 regarding this particular document?</p> <p>8 A. I have not been aware of this document until</p> <p>9 now, but he has generally said that he contracted to</p> <p>10 become entitled to 9200 shares of stock in Hunts Point</p> <p>11 Ventures.</p> <p>12 Q. Did you ever offer advice to Hunts Point</p> <p>13 Ventures that Mark Phillips should not be named as a</p> <p>14 shareholder in the company?</p> <p>15 A. Not phrased in that manner.</p> <p>16 Q. Okay.</p> <p>17 Do you recall having a discussion or</p> <p>18 communication with anyone at Hunts Point Ventures in</p> <p>19 which the concept of Mark Phillips becoming a</p> <p>20 shareholder in the company was criticized or was</p> <p>21 questioned?</p> <p>22 A. Well, I don't know about criticized or</p> <p>23 questioned, but in the fall of 2012 I met with Mark</p> <p>24 Phillips and Chad Rudkin and told them that to the</p> <p>25 extent that they wanted my firm to continue to</p>	<p>1 Schweickert that's been produced in association with</p> <p>2 this case. That was the first time I saw any such</p> <p>3 document.</p> <p>4 Q. Did your firm prepare those documents --</p> <p>5 that document?</p> <p>6 A. Certainly not.</p> <p>7 Q. Do you have any firsthand recollection as to</p> <p>8 whether or not Mark Phillips transferred \$9,200 to</p> <p>9 Hunts Point Ventures putatively for the purpose of</p> <p>10 purchasing stock in that company?</p> <p>11 THE WITNESS: Can I have that question read</p> <p>12 back?</p> <p>13 THE REPORTER: "Question: Do you have any</p> <p>14 firsthand recollection as to whether or not Mark</p> <p>15 Phillips transferred \$9,200 to Hunts Point Ventures</p> <p>16 putatively for the purpose of purchasing stock in that</p> <p>17 company?"</p> <p>18 A. I have no firsthand knowledge, only hearsay</p> <p>19 that has been relayed to me.</p> <p>20 Q. (By Mr. Kimball) And specifically what was</p> <p>21 the hearsay that was relayed to you on that subject?</p> <p>22 A. Chad Rudkin told me that Mark Phillips did</p> <p>23 not do that.</p> <p>24 Q. Do you recall when he told you that?</p> <p>25 A. Recently, after the commencement of this</p>
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<p>1 represent Hunts Point Ventures on a contingent fee</p> <p>2 basis with respect to the prosecution of its patents,</p> <p>3 I would not feel comfortable having Mark Phillips as</p> <p>4 an active shareholder or representative of the company</p> <p>5 because I wouldn't -- I didn't want to make the</p> <p>6 economic investment in that litigation if I'm going to</p> <p>7 have one of my key witnesses be impeached by</p> <p>8 introduction of evidence of his felony record.</p> <p>9 Q. Were there any other reasons?</p> <p>10 A. No.</p> <p>11 Q. Have you ever seen any stock subscription</p> <p>12 agreements for shareholders in Hunts Point Venture,</p> <p>13 Inc., other than Exhibit 5?</p> <p>14 A. No.</p> <p>15 Q. Do you know if Jennifer Schweickert ever</p> <p>16 executed a stock subscription agreement with --</p> <p>17 A. I beg --</p> <p>18 Q. -- Hunts Point?</p> <p>19 A. Yeah. I beg your pardon. Let me amend</p> <p>20 that.</p> <p>21 With respect to your previous question if</p> <p>22 I've ever seen a subscription agreement, since the</p> <p>23 commencement of this litigation I have now seen</p> <p>24 executed subscription agreements -- or I guess an</p> <p>25 executed subscription agreement from Jennifer</p>	<p>1 case. The \$9200 concept and the 9200 share concept</p> <p>2 concepts -- are concepts that I had never heard of</p> <p>3 prior to the commencement of this case.</p> <p>4 Q. Do you recall if there was an agreement</p> <p>5 between Hunts Point Ventures, Inc., and Mark Phillips</p> <p>6 to pay Mark Phillips \$100,000?</p> <p>7 A. Never heard of that before.</p> <p>8 Q. Was there an agreement on the part of Hunts</p> <p>9 Point Ventures and Mark Phillips to pay for the</p> <p>10 benefit of Mark Phillips \$100,000 toward legal fees?</p> <p>11 A. I -- are you sure you're not thinking of a</p> <p>12 million dollars?</p> <p>13 Q. No, specifically \$100,000 right now.</p> <p>14 A. Never heard of that.</p> <p>15 Q. Okay.</p> <p>16 (Marked Deposition Exhibit No. 6.)</p> <p>17 Q. (By Mr. Kimball) You've been handed a</p> <p>18 document marked as Exhibit 6. Can you tell me if</p> <p>19 you've ever seen a copy of this document before?</p> <p>20 A. I believe that I have.</p> <p>21 Q. Okay.</p> <p>22 And, again, Steven Schweickert is the</p> <p>23 individual you referred to earlier as being the</p> <p>24 primary or initial shareholder in Hunts Point</p> <p>25 Ventures; is that correct?</p>

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<p>1 A. He is.</p> <p>2 Q. Do you recall what his role was with Hunts</p> <p>3 Point Ventures in 2010?</p> <p>4 A. Steve Schweickert?</p> <p>5 Q. Yes.</p> <p>6 A. The only officer, director, or otherwise</p> <p>7 principal representative.</p> <p>8 Q. And shareholder?</p> <p>9 A. Well, as I said before, Joyce Schweickert</p> <p>10 was a shareholder, according to my understanding,</p> <p>11 during the year 2010.</p> <p>12 Q. Right. But he was a shareholder, correct?</p> <p>13 A. Certainly.</p> <p>14 Q. And did that change with regard to any of</p> <p>15 his functions or positions with the company in 2011?</p> <p>16 A. Well, his shareholder ownership changed when</p> <p>17 Joyce Schweickert relinquished her share interest in</p> <p>18 Hunts Point Ventures, and he stepped down as an</p> <p>19 officer -- well, as the chief executive officer at the</p> <p>20 time that he transferred 50 percent ownership interest</p> <p>21 to Chad Rudkin.</p> <p>22 Later he transferred his remaining 50</p> <p>23 percent interest and stepped out of Hunts Point</p> <p>24 Ventures altogether. During that interim period I</p> <p>25 believe he stayed on the board and may have been an</p>	<p>1 A. I have never seen those documents.</p> <p>2 Well, wait a minute. I see "stock</p> <p>3 subscription agreement" here. What do you mean?</p> <p>4 Which memorandum of understanding?</p> <p>5 Q. Well, I'm reading the text from</p> <p>6 Mr. Schweickert's declaration, and I guess I should</p> <p>7 ask you, did you ever receive a copy of a document</p> <p>8 called "Memorandum of Understanding"?</p> <p>9 A. I would be speculating as to which document</p> <p>10 that might be.</p> <p>11 Q. The text goes on to read, "Mr. Du Wors knew</p> <p>12 when he took over from C&H that we still had to file</p> <p>13 the incorporation documents for HPIP as we had agreed</p> <p>14 as well as file the amended articles of incorporation</p> <p>15 for HPV."</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you know what the reference to HPIP is?</p> <p>19 A. I have several ideas about what that might</p> <p>20 possibly mean but was never given a clear</p> <p>21 understanding of what HPIP was. I assume it stood --</p> <p>22 stands for Hunts Point Intellectual Property, and it</p> <p>23 may have been contemplated by Mr. Schweickert at some</p> <p>24 point that he would use that entity as an IP holding</p> <p>25 company.</p>
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<p>1 officer within the C suite somewhere but not the chief</p> <p>2 executive officer.</p> <p>3 Q. Okay.</p> <p>4 Would you turn to page nine of Exhibit 6.</p> <p>5 A. Okay.</p> <p>6 Q. Beginning with paragraph 34, there is text</p> <p>7 which reads, "After Mr. Du Wors was retained in June,</p> <p>8 2010, I met with him at his office and provided him a</p> <p>9 copy of the documents prepared by C&H, which included</p> <p>10 a signed copy of the stock subscription agreement and</p> <p>11 Memorandum of Understanding."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Do you know if that's true or false?</p> <p>15 A. I believe it's false.</p> <p>16 Q. Did you meet with Mr. Schweickert at your</p> <p>17 office in June of 2010?</p> <p>18 A. Many times.</p> <p>19 Q. Did he provide you with a copy of corporate</p> <p>20 documents prepared by Cairncross & Hempelmann?</p> <p>21 A. Eventually he did, but I don't believe he</p> <p>22 did at that time.</p> <p>23 Q. Did he provide you with a signed copy of the</p> <p>24 stock subscription agreement and memorandum of</p> <p>25 understanding?</p>	<p>1 Q. And there's also reference to HPV. Is it</p> <p>2 your understanding that this is likely a reference to</p> <p>3 Hunts Point Ventures?</p> <p>4 A. I would have to -- I'd be speculating, but I</p> <p>5 assume that's what it is.</p> <p>6 Q. Okay.</p> <p>7 So the statement which reads in part,</p> <p>8 "Mr. Du Wors knew when he took over from C&H that we</p> <p>9 still had to file incorporation documents for</p> <p>10 HPIP...", do you see that?</p> <p>11 A. I do.</p> <p>12 Q. And is that true?</p> <p>13 A. No.</p> <p>14 Q. How is that not true?</p> <p>15 A. Well, it's false, and that makes it</p> <p>16 demonstrably not true. I mean, there's literally</p> <p>17 almost nothing true about that statement.</p> <p>18 Q. All right.</p> <p>19 So, first of all, did you take over</p> <p>20 corporate document functions from Cairncross</p> <p>21 Hempelmann?</p> <p>22 A. Later we did.</p> <p>23 Q. But not in June of 2010?</p> <p>24 A. No.</p> <p>25 Q. Do you recall when that occurred?</p>

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<p>1 A. I want to say it might have been the fall 2 sometime. 3 Q. Of 2010? 4 A. Uh-huh. Might have been -- yeah, I think it 5 was fall, like late fall, almost winter. 6 Q. Was a new retainer or engagement agreement 7 prepared to memorialize that? 8 A. No. But there's an email somewhere where 9 Steve says to me, "I want you to take over from 10 Cairncross." 11 Q. Do you recall discussing with 12 Mr. Schweickert anything concerning doing amended 13 articles of incorporation for Hunts Point Ventures? 14 A. No. 15 Q. Did you ever agree to file articles of 16 amendment for Hunts Point Ventures? 17 A. No. Not that I recall. 18 Q. So then going on to the next statement in 19 paragraph 34, which reads, "However, Mr. Du Wors 20 immediately told me not to do either of these tasks," 21 Do you see that? 22 A. I do. 23 Q. Is that false? 24 A. It is. 25 Q. It goes on to read, "He told me that he felt</p>	<p>1 Q. Not before? 2 A. I don't believe so. 3 We may have discussed it in June of 2010 4 when we talked about the transfer of intellectual 5 property, because I was asked to advise on whether or 6 not Mark's intellectual property could be transferred 7 to Hunts Point Ventures as a means of it not being 8 seized either by the U.S. government or by MOD 9 Systems. 10 And I told him that -- I told all of them 11 that absent a fair -- an exchange of legally 12 sufficient consideration, that transfer could be 13 considered a fraudulent transfer that could be undone 14 by way of a fraudulent transfer lawsuit against Hunts 15 Point Ventures. 16 I also told them that if Mark was a 17 shareholder in Hunts Point Ventures, it would enable 18 whatever that judgment creditor was, MOD Systems or 19 the U.S. Government, to seize Mark Phillips' shares 20 and potentially bring some kind of a dissolution 21 action in order to dissolve or otherwise take away 22 those assets. 23 Certainly when I -- and so when I say I may 24 have said it in June 2010, what I mean is that I don't 25 know that I would have explicitly said, "Mark, you are</p>
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<p>1 it was in Mark's best interests if his ownership of the 2 IP was not formally acknowledged in the incorporated 3 documents..." 4 Do you know if that's true? 5 A. I do. 6 Q. Is it true or false? 7 A. It is false. 8 Q. And it continues, "...and he directed me to 9 put aside those documents that recognized Mark's 10 ownership interest..." 11 Is that true or false? 12 A. That is false. 13 Q. "...specifically the amended Articles of 14 Incorporation and other amended documents for" Hunts 15 Point Ventures or "HPV." 16 Do you see that? 17 A. I do. 18 Q. Is that also false? 19 A. It is false. 20 Q. Do you recall ever having a conversation 21 with Mark Phillips and informing him or telling him 22 that your understanding was that he was not a 23 shareholder of Hunts Point Ventures? 24 A. I believe that I had that conversation with 25 him in the fall of 2012.</p>	<p>1 not a shareholder in Hunts Point Ventures," but 2 because when consulting on the question of whether or 3 not that transfer would be fraudulent in nature or 4 whether or not a judgment creditor could reach Mark's 5 interest in the company or -- or the intellectual 6 property itself, the assumption I would have been 7 basing my advice on was that I did not understand Mark 8 Phillips to have a shareholder interest in the 9 company. 10 Q. All right. 11 A. It is possibly for that reason no one ever 12 told me about this subscription agreement for 9200 13 shares, assuming it is indeed authentic. 14 Q. All right. 15 Turn, if you would, to page eleven of 16 Exhibit 6. 17 A. Okay. 18 Q. And specifically, would you take a look at 19 paragraph 39, which begins around line 15. It reads, 20 "Although Mark believed that he was shareholder of..." 21 Hunts Point Ventures, "I had been advised by 22 Mr. Du Wors to not file the amended articles of 23 incorporation and was told by Mr. Du Wors that he 24 would discuss all of this with Mark and that I did not 25 have to worry about explaining the legal strategy to</p>

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<p>1 Mark."</p> <p>2 So I guess, first of all, turning to the</p> <p>3 text, "Although Mark believed that he was a</p> <p>4 shareholder of..." Hunts Point Ventures, again, do you</p> <p>5 have any knowledge as to whether or not Mark Phillips</p> <p>6 believed he was at any time a shareholder of Hunts</p> <p>7 Point Ventures?</p> <p>8 A. I certainly can't crawl inside of his head,</p> <p>9 but I have heard him make that assertion since the</p> <p>10 commencement of this lawsuit.</p> <p>11 Q. Did he make the assertion prior to the</p> <p>12 commencement of the lawsuit?</p> <p>13 A. No, including not in the fall 2012 meeting</p> <p>14 that I had with him and Chad Rudkin.</p> <p>15 Q. Continuing on, Mr. Schweickert writes, "...I</p> <p>16 had been advised by Mr. Du Wors to not file the</p> <p>17 amended articles of incorporation..."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And I believe you addressed this already,</p> <p>21 but I'll again -- ask it again. Is that true or</p> <p>22 false?</p> <p>23 A. It is false.</p> <p>24 Q. "...and was told by Mr. Du Wors that he</p> <p>25 would discuss all of this with Mark and that I did not</p>	<p>1 course of action."</p> <p>2 Do you recall discussing that with</p> <p>3 Mr. Schweickert?</p> <p>4 A. Well, I mean, it's kind of a general</p> <p>5 statement. With respect to Mark's interests, the</p> <p>6 outcome of his civil litigation and criminal case,</p> <p>7 yes, certainly those outcomes would determine the best</p> <p>8 course of action for Mr. Phillips. I mean, that's all</p> <p>9 that was going on with him legally that I understood</p> <p>10 at that time.</p> <p>11 Q. All right.</p> <p>12 A. I mean, yeah.</p> <p>13 MR. FRANKLIN: Mark, let me -- if you --</p> <p>14 that answer's concluded, I'd like to ask if I could --</p> <p>15 THE WITNESS: Sure.</p> <p>16 MR. FRANKLIN: -- talk to my client briefly.</p> <p>17 MR. KIMBALL: Sure.</p> <p>18 MR. FRANKLIN: Okay.</p> <p>19 (Discussion off the record.)</p> <p>20 MR. FRANKLIN: I have not objected, but it</p> <p>21 seems to me that, because I understand that there are</p> <p>22 some -- there's some overlap certainly between this</p> <p>23 case and Mark Phillips' case, but it seems to me now</p> <p>24 that the inquiry really that you're going into really</p> <p>25 has -- I can't see that it has anything to do with</p>
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<p>1 have to worry about explaining the legal strategy to</p> <p>2 Mark."</p> <p>3 A. Also false.</p> <p>4 Q. All right.</p> <p>5 "Mr. Du Wors assured me that Mark's</p> <p>6 interests would be protected..."</p> <p>7 Is that true or false?</p> <p>8 A. False.</p> <p>9 Well -- hang on. I don't know entirely what</p> <p>10 that means. I certainly have always said that, while</p> <p>11 representing Mark the law firm would work to protect</p> <p>12 Mark's interests. That is true. But I don't -- I</p> <p>13 never certainly made any guarantees as to what would</p> <p>14 happen with respect to the outcomes of our</p> <p>15 representation of Mr. Phillips. I don't predict those</p> <p>16 outcomes.</p> <p>17 Q. In 2010 your office did have a professional</p> <p>18 relationship with Mr. Phillips as a client, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that continued into 2011 as well?</p> <p>21 A. Yeah, until about June of 2011.</p> <p>22 Q. Okay.</p> <p>23 And then finally, the last clause in that</p> <p>24 paragraph reads, "...the outcome of Mark's civil</p> <p>25 litigation and criminal case would determine the best</p>	<p>1 Jennifer Schweickert's case and it -- or that it would</p> <p>2 lead to discoverable testimony.</p> <p>3 It seems to me this is a preview of the Mark</p> <p>4 Phillips deposition, and unless you can explain to me</p> <p>5 how this is reasonably calculated to lead to discovery</p> <p>6 of admissible evidence in Jennifer Schweickert's case,</p> <p>7 which is fairly specific in what its allegations</p> <p>8 are -- you know, I understand that there is some</p> <p>9 degree of overlap, but I think it's limited. So if</p> <p>10 you could address that.</p> <p>11 MR. KIMBALL: Sure. I think that we don't</p> <p>12 get to the point -- strike -- I'll reword that. We --</p> <p>13 in order to get to the point in Jennifer's case where</p> <p>14 we can lay out who owned what at what point in time,</p> <p>15 because she was granted a stock interest in the</p> <p>16 company as well or some sort of equitable interest, we</p> <p>17 need to know who the shareholders were, when they came</p> <p>18 and went, who was added, how much they got and when.</p> <p>19 And so that is the relevance.</p> <p>20 MR. FRANKLIN: Well, I -- yeah, I can</p> <p>21 understand the relevance of that, and I don't have any</p> <p>22 objection to inquiries that are directed toward the</p> <p>23 stock ownership. And I -- that's -- certainly I felt</p> <p>24 that that was -- those were legitimate questions that</p> <p>25 were directed toward the stock ownership. You know,</p>

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<p>1 the -- whether it was 50/50 between Joyce and Steve or 2 whether it was 92/8 percent between Steve and Joyce I 3 don't know, but -- 4 I mean, it seems to me once we get much 5 beyond that, we're really getting -- I don't see how 6 it is related to Jennifer's claims, and I -- and 7 that's not because this dec -- this declaration is in 8 the Mark Phillips allega -- Mark Phillips litigation, 9 although that's where it is. 10 And I think that to -- in a large degree, to 11 a large part, Schweickert -- Steve Schweickert's 12 declaration of December 20th, 13, is set forth 13 presumably to support the allegations of Mark 14 Phillips' claims. It really doesn't seem to have 15 much -- much relevance. And I -- and I appreciate 16 that there could be some things that are referred to 17 in the body of the declaration that could have, but 18 once you get beyond the stock ownership, and I -- you 19 have a right to certainly inquire about that, I 20 believe, but to go -- you know, to make this a 21 preliminary foray on behalf of Mr. Phillips I think is 22 inappropriate. 23 So I -- that's -- that would be my input and 24 observation. I'm not telling you that I will 25 necessarily tell Mr. Du Wors not to answer, but I will</p>	<p>1 MR. KIMBALL: Do we have any -- 2 MR. WAYMAN: I'm not aware -- 3 MR. FRANKLIN: -- because you'd asked -- we 4 had a conversation. 5 MR. KIMBALL: Okay. 6 MR. FRANKLIN: You asked me if he was -- if 7 the 18th was good. I called John. He said, "Yeah, 8 I'm good if -- from 1:00, but I'm -- I cut off at 9 3:00." And I'm pretty -- I'm pretty sure that was 10 communicated to you guys, but I guess what I said -- 11 MR. KIMBALL: I don't recall that. I mean, 12 obviously it is what it is, and we'll just keep going 13 until -- 14 MR. FRANKLIN: Okay. Let's -- let's -- 15 MR. KIMBALL: -- the hard stop occurs. 16 THE WITNESS: Why don't we just -- let's get 17 to it. 18 MR. FRANKLIN: Let's -- let's get on with 19 the deposition so we can get as much done as you can, 20 because I believe if -- and that's another reason, 21 Mark. I think if you -- if you -- if you go after the 22 Jennifer Schweickert inquiry, I believe there's every 23 reason to believe you're going to finish by, you know, 24 3:00, 3:30, 3:45, so -- 25 MR. KIMBALL: And I will let you know that</p>
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<p>1 take an object -- I will object to questioning that is 2 afield and is more properly conducted in Mark 3 Phillips' litigation and would accordingly, you know, 4 at the appropriate time move to strike it, but you go 5 ahead and do what -- whatever you want to do. 6 THE WITNESS: I also -- 7 MR. KIMBALL: And -- 8 THE WITNESS: I also had a hard stop this 9 afternoon. It's not completely hard, but we should 10 probably get to the core testimony. 11 MR. KIMBALL: And what time is your hard 12 stop? 13 THE WITNESS: Well, I -- what -- what seemed 14 to be communicated to you previously was that I had a 15 three o'clock stop, but at the pace this is going, 16 that's not going to work, so I'll try to push it a 17 half hour, 45 minutes if I can. 18 MR. KIMBALL: How was that communicated to 19 us, the hard stop? 20 MR. FRANKLIN: I'm pretty sure we sent 21 you a -- I'm pretty sure we advised you of the 22 three o'clock, that my guy is okay -- I know that I 23 did, and I believe that I sent you a -- either an 24 email or a letter that said, "Look, he's good until 25 three o'clock" --</p>	<p>1 the very next page of my questions targets 2 specifically Jennifer Schweickert. 3 MR. FRANKLIN: All right. 4 THE WITNESS: Let's get to it. We started 5 late. Let's pick it up. 6 Q. (By Mr. Kimball) So turn, if you would, to 7 page 13 of Exhibit 6, specifically paragraph 46, which 8 reads, "After the settlement, Mr. Du Wors completed 9 the assignment of the Phillips IP to HPV and filed the 10 appropriate documentation." 11 Do you know if that's true or false? 12 A. I don't know what he means by appropriate 13 documentation. 14 Q. Okay. 15 Did you complete documentation relating to 16 the assignment of the Phillips IP? 17 A. "After the settlement." The problem is 18 "after the settlement." I don't -- I don't think it 19 took place after the settlement. We transacted that 20 IP transfer in October of 2010 I believe, and the 21 settlement wasn't finalized until the end of 22 January 2011. 23 Q. And just so we're clear on what settlement 24 we're talking about, that's the settlement involving 25 MOD, correct?</p>

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<p>1 A. That's the one I assume this is talking 2 about and it's the one that I'm talking about. I'm -- 3 Q. All right. 4 A. -- not aware of any other settlement 5 relating to our representation of Mr. Phillips. 6 Q. All right. Thank you. 7 And then the next sentence reads, "Shortly 8 prior to this settlement, I can clearly recall a shift 9 in Mr. Du Wors' attitude towards me" -- that would be 10 Mr. Schweickert -- "and his posture towards HPV. He 11 became extremely insistent on being involved in every 12 action undertaken by HPV, no matter how small." 13 So I guess my question is, over a period of 14 time did the nature of your relationship with Hunts 15 Point Ventures change where you were having a greater 16 role in the day-to-day legal and business affairs -- 17 or -- excuse me -- legal or business affairs of Hunts 18 Point Ventures? 19 A. No. 20 MR. FRANKLIN: Objection; compound, but go 21 ahead and answer. 22 A. No. There was no perceptible change. I was 23 Hunts Point Ventures' outside litigation counsel. My 24 business advice was pretty limited and tended to 25 relate more towards the litigation objectives.</p>	<p>1 about representing any other litiga -- litigation 2 client I represent, so there was no peculiar 3 anxiousness or enthusiasm or passion about that. 4 I represent lots of intellectual property 5 holders in intellectual property litigation, half of 6 them on a contingency basis and half of them on an 7 hourly basis, and I felt the appropriate and 8 professional level of zeal, I suppose, but -- 9 Q. Did you ever discuss with Steve Schweickert 10 the advantages of using the Phillips IP to encourage 11 outside investment in the company? 12 A. No. 13 (Marked Deposition Exhibit No. 7.) 14 Q. (By Mr. Kimball) Mr. Du Wors, you've been 15 handed a stack of three documents collectively marked 16 as Exhibit 7. The first document is titled 17 "TECHNOLOGY LICENSE AGREEMENT," and the second one is 18 also titled "TECHNOLOGY LICENSE AGREEMENT," and the 19 third one -- 20 MR. WAYMAN: No. There should be three 21 separate documents. 22 MR. KIMBALL: These are not -- 23 MR. WAYMAN: They're out of order. 24 MR. FRANKLIN: Which is the agreement? 25 MR. WAYMAN: There should be -- my mistake.</p>
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<p>1 Q. (By Mr. Kimball) So then the next sentence 2 begins, "He was very involved in every aspect of..." 3 Hunts Point Ventures... 4 Would that be true or false? 5 A. That would be false. 6 Q. "...including business decisions and 7 investments..." 8 Would that be true or false? 9 A. That would be especially false. 10 Q. "...and was anxious to use the Phillips IP 11 to encourage investment and generate income from 12 patent violation settlements." 13 Is that true? 14 A. I don't recall having been anxious during 15 that period. 16 Q. Were you -- 17 A. I mean, I wasn't -- if ultimately what 18 you're asking me is -- 19 Q. Did you believe it would be beneficial to 20 use the Phillips IP to encourage investment and 21 generate income from patent violation settlements? 22 A. The second part, yeah. I mean, you know, 23 anxious, I had been retained to do that and that's 24 what I do for a living, so I would call myself no more 25 anxious about that representation than I would be</p>	<p>1 If you want to give me these two right 2 here -- 3 MR. FRANKLIN: Let's -- 4 MR. WAYMAN: Yeah, there should be three. 5 Sorry about that. 6 THE WITNESS: Tell you what, Mark. Why 7 don't you -- for the sake of the record, why don't you 8 mark the second two in that set as 8 and 9. 9 Otherwise -- 10 MR. KIMBALL: Let's do this. Okay. So 7 is 11 titled -- 12 THE WITNESS: That's the articles. 13 MR. WAYMAN: 7 is LLC operating agreement. 14 MR. KIMBALL: All right. 15 MR. WAYMAN: 8 is contribution agreement. 16 Q. (By Mr. Kimball) All right. So, first of 17 all, with regard to Exhibit 7, which is titled 18 "LIMITED LIABILITY COMPANY AGREEMENT OF HUNTS POINT 19 INTELLECTUAL PROPERTIES, LLC," do you see that 20 document? 21 Oh, it's here. 22 A. Limited liability agreement. I do. 23 Q. Okay. 24 Have you ever seen that document before? 25 A. I never have.</p>

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<p>1 Q. Did anyone ever tell you who drafted this</p> <p>2 document?</p> <p>3 A. No, but it appears to be forged.</p> <p>4 Q. What do you mean by "forged"?</p> <p>5 A. Well, I think that it -- I'm looking at</p> <p>6 the -- well, first of all, my understanding based on</p> <p>7 everything I've ever been told is that Hunts Point</p> <p>8 Intellect -- Intellectual Properties, LLC, does not</p> <p>9 exist and has never existed, and so I'd be curious to</p> <p>10 go on the Secretary of State's office right -- website</p> <p>11 right now to see if it actually ever was formed as an</p> <p>12 entity.</p> <p>13 I'd note that the date purportedly</p> <p>14 identified in the opening preamble to all of these</p> <p>15 agreements is May of 2010, but the signatory appears</p> <p>16 to be Chad Rudkin, but, of course, Chad Rudkin was not</p> <p>17 a manager or a principal of any entity relating to the</p> <p>18 Hunts Point Ventures enterprise until about the middle</p> <p>19 of 2012.</p> <p>20 It appears to be the case that what Mark</p> <p>21 Phillips is attempting to do by fabricating these</p> <p>22 documents is give the impression that the party to be</p> <p>23 charged, Chad Rudkin, had -- was entering into these</p> <p>24 agreements, but Mark wanted it to be the relevant date</p> <p>25 of just before I was retained, so May of 2010.</p>	<p>1 Q. All right.</p> <p>2 A. -- or registered with the Secretary of State</p> <p>3 of any state. I assume it would have been Washington,</p> <p>4 but I've never seen those.</p> <p>5 Q. Isn't it possible that individuals seeking</p> <p>6 to set forth their rights and responsibilities with</p> <p>7 regard to an LLC could prepare and execute a limited</p> <p>8 liability company agreement prior to actually filing</p> <p>9 with the Secretary of State?</p> <p>10 A. Well, if your question as phrased is asking</p> <p>11 isn't it possible, of course anything is possible</p> <p>12 within the boundaries of reality, so I suppose that</p> <p>13 could be done.</p> <p>14 The problem is this is totally inconsistent</p> <p>15 with anything anybody related to these entities ever</p> <p>16 told me, including Mark Phillips, during the relevant</p> <p>17 time period. The first time I ever heard about any of</p> <p>18 this stuff is after the commencement of this lawsuit,</p> <p>19 and the documents look like the kind of thing Mark</p> <p>20 tends to fabricate when he's fabricating documents,</p> <p>21 just like he did in relation to his management of MOD</p> <p>22 Systems, you know, the stuff that he was prosecuted</p> <p>23 for, that bank fraud claim where he generated board</p> <p>24 resolutions when he wasn't on the board and didn't</p> <p>25 have the power, and -- and just the characteristics</p>
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<p>1 Unfortunately, Chad wasn't part of it in 2010, May of</p> <p>2 2010. He and Doug Lower were kind of hangers-on.</p> <p>3 I'd note that in the capital table in -- on</p> <p>4 Exhibit A he has purported to kind of try to sketch</p> <p>5 out what the cap table might have looked at had this</p> <p>6 deal gone -- been gone into the way that Mark wishes</p> <p>7 it had in May of 2010, and he has listed Mark</p> <p>8 Phillips, Steve Schweickert, and Chad Rudkin. If this</p> <p>9 was really made at the time, it would have included</p> <p>10 Doug Lower on the list.</p> <p>11 So I think what's going on is that Mark is</p> <p>12 trying to invent these documents to fabricate some</p> <p>13 reality, but the dates aren't working out and,</p> <p>14 historically speaking, the picture of folks that would</p> <p>15 have been involved isn't working out either. So I am</p> <p>16 pretty darn sure that Mark made these up, as he has</p> <p>17 been found to do.</p> <p>18 Q. You indicated that your understanding is</p> <p>19 that Hunts Point Intellectual Properties, LLC, was</p> <p>20 actually never filed with the Secretary of State,</p> <p>21 correct?</p> <p>22 A. Which entity?</p> <p>23 Q. Hunts Point Intellectual Properties, LLC.</p> <p>24 A. I certainly have no independent knowledge of</p> <p>25 it ever having been formed --</p>	<p>1 that I told you about, the May of 2010 date, but Chad</p> <p>2 Rudkin is the signing party at a time when nobody ever</p> <p>3 would have thought Chad would be the signing party for</p> <p>4 any Hunts Point entity. And then the sketch of a cap</p> <p>5 table that leaves out Doug Lower looks to me like</p> <p>6 they're fabricated by a person who's been convicted of</p> <p>7 multiple counts of fraud.</p> <p>8 Q. Did you have discussions with Doug Lower or</p> <p>9 anyone else about whether or not they were going to</p> <p>10 own interests in an LLC called Hunts Point</p> <p>11 Intellectual Properties, LLC?</p> <p>12 A. No, and I don't have an independent</p> <p>13 recollection of anyone really contemplating a Hunts</p> <p>14 Point intellectual property as being likely to exist.</p> <p>15 I think I heard it once in perhaps the spring of 2011,</p> <p>16 but I'm hazy on dates, because it's been a long time,</p> <p>17 when Steve Schweickert asked me about whether or not</p> <p>18 it was valuable to have an intellectual property</p> <p>19 holding company.</p> <p>20 And I said that I thought that those -- I</p> <p>21 thought the answer to that -- and in that conversation</p> <p>22 he may have said HPIP. If I've ever heard that term,</p> <p>23 that's the only place I ever would have heard it. I</p> <p>24 said in response -- I gave him some kind of advice. I</p> <p>25 think I told him, "Part of the decision would be tax</p>

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<p style="text-align: right;">Page 54</p> <p>1 driven, and I'm not competent to consult on that,"</p> <p>2 Part of it would be an asset protection function, and</p> <p>3 part of it would be the mechanics of joint</p> <p>4 partnerships and joint venture or strategic</p> <p>5 partnership agreements between various entities within</p> <p>6 the family and outside.</p> <p>7 So ultimately, as I understand, there was a</p> <p>8 decision not to have an intellectual property holding</p> <p>9 company but, rather, to leave the intellectual</p> <p>10 property in title in the name of Hunts Point Ventures,</p> <p>11 Inc., such that Hunts Point Ventures, Inc., would be</p> <p>12 the entity that asserted -- asserted infringement</p> <p>13 claims relating to that intellectual property.</p> <p>14 I understood that Hunts Point Venture Group,</p> <p>15 LLC, would be used to act as a licensee of that</p> <p>16 intellectual property and commercially deploy</p> <p>17 products, the idea being that there would be one</p> <p>18 entity that was a patent troll and another entity that</p> <p>19 was legitimately in business, which I think was the</p> <p>20 ultimate goal, but I don't -- I never -- people didn't</p> <p>21 talk about HPIP. I didn't know anything about it.</p> <p>22 Q. You made comments a moment ago regarding</p> <p>23 Exhibit 7 and questioning its legitimacy or validity</p> <p>24 in part because there was no mention of Doug Lower on</p> <p>25 the member and manager page. Do you --</p>	<p style="text-align: right;">Page 56</p> <p>1 meetings.</p> <p>2 Q. And you specifically recall that there was</p> <p>3 some discussion that to the extent a new company was</p> <p>4 formed, that Mr. Lower would be represented in that</p> <p>5 new company?</p> <p>6 A. Not to the extent that a new company was</p> <p>7 formed. I understand that they -- that whatever their</p> <p>8 relationship was going to be, it was going to be</p> <p>9 either to HPV or possibly to HPVG, which was the group</p> <p>10 that was going to deploy consumer products of some</p> <p>11 kind or technology products of some kind.</p> <p>12 (Discussion off the record.)</p> <p>13 (Marked Deposition Exhibit No. 8.)</p> <p>14 Q. (By Mr. Kimball) Mr. Du Wors, you've been</p> <p>15 handed a document marked as Exhibit 8. Have you ever</p> <p>16 seen this document before?</p> <p>17 A. Looks familiar. I mean, it looks a lot like</p> <p>18 the intellectual property assignment agreement that we</p> <p>19 prepared for Mark Phillips and Hunts Point Ventures,</p> <p>20 but I would have to compare it to the document I have</p> <p>21 back at my office, because this contains features that</p> <p>22 I don't recall, such as a 30-day payment of \$100,000.</p> <p>23 I don't recall that.</p> <p>24 Additionally, my recollection was that there</p> <p>25 were two schedules of intellectual property affixed to</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Correct.</p> <p>2 Q. -- recall that?</p> <p>3 So why is it that Doug Lower wouldn't</p> <p>4 necessarily be identified as a member or manager in</p> <p>5 this company to be formed?</p> <p>6 A. Because when they showed up in my offices</p> <p>7 during that period getting -- leading up to Mark</p> <p>8 Phillips' trial, they came every week to talk about</p> <p>9 the company and what they were going to do and how</p> <p>10 they wanted to all work together. Doug Lower was</p> <p>11 always there.</p> <p>12 And my understanding was that whatever</p> <p>13 relationship they all firmed up, that Doug Lower and</p> <p>14 Chad Rudkin would essentially play the same role but</p> <p>15 with different job duties, but -- whatever their</p> <p>16 salary was, whatever they ended up working out in</p> <p>17 terms of an ownership split.</p> <p>18 Q. And what was that understanding based upon?</p> <p>19 A. I never heard -- I never heard the actual</p> <p>20 terms of any agreement.</p> <p>21 Oh, what was the understanding based on?</p> <p>22 Q. Yes, your understanding.</p> <p>23 A. That's just what they all either said</p> <p>24 explicitly or indicated through their speech during</p> <p>25 the time period that they would come to my office for</p>	<p style="text-align: right;">Page 57</p> <p>1 the IP transfer agreement that we created, but I could</p> <p>2 be wrong about that, but I would certainly need to</p> <p>3 compare them.</p> <p>4 I'd note that this doesn't have Bates stamps</p> <p>5 on it, and to the extent that we have produced</p> <p>6 anything, it had Bates stamps on it.</p> <p>7 I'd also notice that -- note that this has</p> <p>8 an "MP" in the lower right-hand corner in Mark</p> <p>9 Phillips' handwriting, which I recognize, which means</p> <p>10 that it probably came from Mark Phillips in the course</p> <p>11 of gathering and/or manufacturing documents in</p> <p>12 association with this case, so this could contain</p> <p>13 terms that were not in the actual agreement that was</p> <p>14 executed.</p> <p>15 Q. And the original of the executed agreement,</p> <p>16 where would that be located?</p> <p>17 A. I don't know where the original is. We</p> <p>18 would have a copy in my files.</p> <p>19 Q. Of the executed agreement?</p> <p>20 A. According to our ordinary procedures, we</p> <p>21 would. I would have to go and look to see if we do,</p> <p>22 but I believe that we produced it in association with</p> <p>23 this litigation.</p> <p>24 Q. Could you take a look at paragraph three on</p> <p>25 the first page of Exhibit 8?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. This is the paragraph that I just told you I 2 don't think is actually what ended up in the agreement 3 we prepared for Mark Phillips and Steve Schweickert. 4 I don't think that 100-day feature was there. 5 Q. All right. 6 Do you know if Mr. Phillips was ever paid 7 the \$100,000 referred to in paragraph 3.(a)? 8 A. Having only heard of that concept for the 9 first time today, I have no knowledge relating to that 10 subject at all. 11 Q. All right. 12 And do you know if the purchaser, which 13 would be the company here, ever fulfilled its 14 obligation in paragraph 3.(b) to pay up to \$1 million 15 of Mr. Phillips' attorney fees, court costs, and 16 related expenses? 17 A. I think that it went well in excess of that 18 obligation. 19 Q. So you think more than a million dollars was 20 paid? 21 A. No. I think that it paid for more than just 22 the MOD Systems litigation. 23 Q. Okay. 24 Do you know what the total dollar amount 25 was?</p>	<p style="text-align: right;">Page 60</p> <p>1 Steve are related? 2 A. He is her uncle. No. He is her first 3 cousin once removed. 4 Q. Do you recall when you first heard of the 5 name Jennifer Schweickert? 6 A. Not with any level of specificity, except to 7 say that I think it was probably in the first half of 8 2011. 9 Q. All right. 10 And do you recall the context in which that 11 name was first brought up? 12 A. Jennifer Schweickert was going to invest 13 money in Hunts Point Ventures or -- or Hunts Point 14 Venture Group or loan either of those entities money 15 or somehow contribute capital to one or more of those 16 entities for the purpose of paying my attorney fee 17 bill. I was never told what the terms of that 18 financial exchange were. 19 Q. All right. 20 (Discussion off the record.) 21 (Marked Deposition Exhibit No. 10.) 22 Q. (By Mr. Kimball) Mr. Du Wors, you've been 23 handed a document marked as Exhibit 10. Have you ever 24 seen that document before? 25 A. I certainly have never seen it before the</p>
<p style="text-align: right;">Page 59</p> <p>1 A. For MOD Systems? 2 Q. Yes. 3 A. I would estimate that it is approximately 4 \$100,000. 5 Q. All right. 6 (Marked Deposition Exhibit No. 9.) 7 Q. (By Mr. Kimball) You've been handed a 8 document marked as Exhibit 9, which consists of 9 several pages, all of which are titled "PATENT 10 INTEREST ASSIGNMENT." Have you ever seen this 11 collection of documents before? 12 A. I don't know. It's possible that I have. I 13 believe the documents similar to these were executed 14 in or about -- or anywhere between August of 2010 and 15 January of 2011, but they were not prepared by me. 16 They were prepared by Derek Linke at my firm. 17 Q. And is Derek Linke an attorney? 18 A. He is. 19 Q. All right. 20 A. But I can't tell you if these were them. 21 Q. You have heard of the name Jennifer 22 Schweickert, correct? 23 A. I have. 24 Q. And we've been discussing an individual 25 named Steve Schweickert. Do you know if Jennifer and</p>	<p style="text-align: right;">Page 61</p> <p>1 commencement of this lawsuit, and I don't know if it 2 is what I saw relating to this transaction following 3 the commencement of this lawsuit. 4 Q. And what transaction are you referring to? 5 A. Jennifer Schweickert's contribution of 6 \$200,000 to either of Hunts Point Ventures or Hunts 7 Point Venture Group, LLC. 8 Q. Do you know if this document was drafted by 9 anyone at your office? 10 A. It certainly was not drafted by anyone at my 11 office. 12 Q. And what are you basing that certainty on? 13 A. I know all the lawyers at my firm, and we 14 didn't consult on this deal or draft this deal or 15 participate in the transaction or know anything about 16 it, and the only people it possibly conceivably could 17 have been would be me or Derek Linke or Michael Spain, 18 and none of them did it either, and we've never had a 19 copy of it at our office. 20 Q. Do you know if \$200,000 was contributed or 21 loaned pursuant to the terms of Exhibit 10 to Hunts 22 Point Ventures? 23 A. Well, if you break your question in half, I 24 can answer it. 25 Q. All right.</p>

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<p>1 A. Steve Schweickert and Chad Rudkin and 2 Elizabeth Rudkin have all stated to me that, indeed, 3 Jennifer Schweickert contributed \$200,000 to Steve 4 Schweickert for the purpose of one of those entities 5 or both or -- or the enterprise in general. I have no 6 idea if it was pursuant to this agreement. 7 My understanding was that -- the 8 understanding I formed prior to the commencement of 9 this lawsuit was that, in fact, Steve Schweickert had 10 ginned up two different deal documents that he had 11 given to Jennifer Schweickert and that he had signed 12 both of them and that, in fact, he had never received 13 a signed copy in return of those. And when I was 14 shown those two documents, they did not look like 15 this. In fact, this looks completely different. 16 And then when Jennifer began asserting 17 demands that my law firm pay the money that she had 18 contributed to Hunts Point Ventures, I asked for a 19 copy of whatever written agreement governed her rights 20 in that regard, and she declined to provide me with 21 one. 22 So I think today is the first time I've ever 23 seen Exhibit 10. The first time I ever saw any 24 unsigned documents relating to Jennifer Schweickert's 25 contribution of funds to Steve Schweickert was shortly</p>	<p>1 ever seen this document before? 2 A. I don't know. This could be one of the two 3 documents that I was shown prior to the commencement 4 of this lawsuit, but not any -- anywhere near the time 5 when Ms. Schweickert made her contribution of money. 6 The fact that this provides for \$100,000 makes me 7 think that I have not seen it, because my 8 understanding was that all of the documents Steve 9 Schweickert created related to the contribution of 10 \$200,000. 11 Q. When did you first speak to Ms. Schweickert 12 concerning her loaning money to either of the Hunts 13 Point entities? 14 A. The same time as my last conversation with 15 Jennifer Schweickert on that subject, which was 16 sometime in the late winter, early spring of 2011. 17 Q. And not before? 18 A. Certainly not. 19 Q. Turn, if you would, to Exhibit 6, page 15; 20 specifically, paragraph 53 on page 15. And in 21 paragraph 53 begins -- and, again, this is a 22 declaration of Steve Schweickert -- "I was a 23 participant on the conference call between Jennifer 24 and Mr. Du Wors which took place in April 2011, and I 25 heard all of Mr. Du Wors' representations regarding</p>
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<p>1 before this litigation, and -- and I think those look 2 differently than this guy, being Exhibit 10. 3 Q. Okay. 4 Now, just so we're clear, Exhibit 10 is 5 signed by at least one party -- or two parties, 6 correct? Excuse me. One party on two places, 7 correct? 8 A. There are -- 9 Q. I'll rephrase my question. 10 There appear to be signatures on behalf of 11 Hunts Point Ventures, Inc., and Hunts Point Venture 12 Group, LLC; is that correct? 13 A. Sure, but I don't know -- I don't know Steve 14 Schweickert's signature by sight. I mean, I believe 15 this could be one of the documents he prepared. 16 According to the receiver in the related case, I was 17 incorrect in my understanding that there were four 18 documents he prepared -- or two documents he prepared. 19 The receiver says there were, in fact, four. 20 Q. And, again, when is the first time that you 21 believe you saw Exhibit 10? 22 A. Today. 23 (Marked Deposition Exhibit No. 11.) 24 Q. (By Mr. Kimball) Mr. Du Wors, you've been 25 handed now a document marked as Exhibit 11. Have you</p>	<p>1 HPVG. During the telephone call, Mr. Du Wors stressed 2 that HPVG had been set up with Mark's knowledge for 3 the purpose of creating a strictly profit-sharing 4 enterprise that would be based upon the prosecution of 5 Marks' patents. He said that as" an -- "He said that 6 as additional incentive for Jennifer to make the loan, 7 besides interest on the loan, that she would be 8 included in the profit sharing between HPV and HPVG at 9 a return of 8 percent." 10 Do you see that? 11 A. I do. 12 Q. So I guess my first question is, do you 13 recall having a conference call involving Jennifer and 14 Steve Schweickert which took place in April 2011? 15 A. I recall that the conversation took place 16 somewhere in that type frame. 17 Q. Okay. 18 A. Time frame. 19 Q. And do you recall if you, in fact, said 20 roughly or approximately that HPV had -- HPVG had been 21 set up with Mark's knowledge for the purpose of 22 creating a strictly profit-sharing enterprise? 23 A. I recall that I said nothing of the kind. 24 Q. And Mr. Schweickert also states that you 25 stated that as an additional sensitive for Jennifer to</p>

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John Du Wors

July 18, 2014

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1 make the loan, besides interest on the loan, that she
2 would be included in the profit sharing between HPV
3 and HPVG at a return of 8 percent. Do you recall if
4 you made that statement?
5 A. I recall that I made no statement of the
6 kind.
7 Q. Did you discuss any kind of a return of
8 8 percent during that phone call?
9 A. We did not. I was specifically kept out of
10 that, of -- of any discussion on that topic.
11 Q. Mr. Schweickert then writes, "He explained
12 HPVG was a concept he came up with and was intended to
13 be inclusive of all people who had given Mark
14 assistance..."
15 Was that true or false?
16 A. That is false.
17 Q. He goes on to write that it "...was Mark's
18 way of showing his appreciation to everyone who had
19 helped him and that all those people were aware they
20 were being granted shares in HPVG."
21 Do you recall making a statement to that
22 effect or anything similar during that phone call?
23 A. I recall that I have never said anything
24 even vaguely resembling the allegation contained in
25 that paragraph.

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1 Q. Mr. Schweickert then writes, "Mr. Du Wors
2 stressed that the money from Jennifer's loan would
3 assist him with Mark's defense and with prosecuting
4 patent violations..."
5 Do you recall making a statement to that
6 effect?
7 A. I believe that -- definitely with respect to
8 the criminal defense. I don't know if I also said it
9 would have anything to do with the patent prosecution.
10 I don't think so.
11 Oh. Patent prosecution in the sense of
12 maintenance? You know, you've got to -- when you talk
13 about patents, you've got to clarify whether you mean
14 prosecution by -- whether you mean pro -- when you say
15 prosecution, whether you mean suing people for
16 infringement versus prosecuting applications before
17 the United States Patent and Trademark Office for the
18 purpose of either maintaining, defending, or obtaining
19 patents.
20 Q. Do you recall if either of those were
21 discussed by you?
22 A. We might have discussed the USPTO
23 intra-office patent prosecution activities as
24 something that might be funded by Jennifer Swipe --
25 Schweickert's contribution. I have some recollection

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1 of that. But certainly the main thing I told her was
2 that her money was going to pay my legal fees for
3 defending Mark criminally.
4 Q. So is the statement that you discussed or
5 you stressed that the money from Jennifer's loan would
6 not only assist Mark's defense but with, quote,
7 "prosecuting patent violations," is that true or
8 false?
9 A. I didn't stress anything. It was a short
10 conversation, and I'm not much of a stresser, but --
11 and I say that non-sarcastically. I'm -- I didn't
12 stress. I didn't -- I wasn't anxious. The -- I
13 wasn't really pushing for anything.
14 I was asked to tell Jennifer Schweickert
15 what patent infringement litigation took -- looked
16 like, and I told her that. And I also did tell her --
17 I didn't really stress to her, but I told her that
18 most of the money's being used to pay me to defend
19 Mark criminally.
20 Q. Finally, Steve Schweickert writes, "...and
21 that settlement money received as a result of the
22 patent violations would directly benefit Mark as well
23 as the other shareholders of HPVG."
24 Do you -- was that true?
25 A. That is patently false.

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1 Q. So you did not discuss that during that
2 April con -- telephone conversation then, correct?
3 A. I have never said anything resembling that
4 statement at any time in my life.
5 Q. But you do recall that either in April or
6 sometime around April of 2011 there was a telephone
7 conference call involving Schweickert -- excuse me --
8 Steve Schweickert and Jennifer; is that correct?
9 A. Well, I recall the one that I participated
10 in somewhere in that time frame.
11 Q. Okay.
12 Do you recall if you initiated that
13 telephone conference or if it was initiated by someone
14 else?
15 A. It was initiated by Steve.
16 Q. So they phoned in to your office?
17 A. Correct.
18 Q. Okay.
19 A. That was necessary because Steve con --
20 well -- I don't know. I mean, it may -- Steve was
21 certainly the person who caused Jennifer to be on a
22 call with me. I couldn't tell you if he called me up
23 and said, "Okay. Please hold while I conference in
24 Jennifer," or if he had Jennifer on the line and put
25 her on hold and conferenced me. It's also possible, I

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<p>1 guess, that I called Steve and then he conferenced 2 Jennifer. I just don't recall. 3 Q. Was there a purpose you had in mind in 4 talking to Jennifer during that phone call? 5 A. Yeah. Steve told me that Jennifer was going 6 to contribute money to -- I don't know -- I don't know 7 that he ever told me what entity he was contributing 8 it to, but that she was contributing money. I think I 9 thought at the time it was some kind of a loan, and he 10 said she wanted to know what this patent trolling 11 thing looks like, and so could I explain patent 12 trolling to her, so I said, "Sure." 13 Q. Was it also to discuss what kind of benefits 14 she would receive by either investing or loaning money 15 to the company? 16 A. Absolutely not. Steve was very careful to 17 exclude me from any discussion on that topic. I never 18 knew the terms. I didn't know what she was getting in 19 return. I didn't know anything about it. In fact, I 20 think I recall -- I think I recall then that Steve 21 said, "Okay, John. You jump off the line," after I'd 22 answered her questions about patent litigation and -- 23 I think she said -- I think he said, "Okay, John. You 24 get off the line and I'll talk with Jennifer about the 25 rest of the stuff," which causes me to believe, in</p>	<p>1 come to me from Steve, and I don't have a recollection 2 of that. I do recall Steve asking if I would do that. 3 Q. Okay. 4 Did you initiate the request to have such a 5 conversation with Steve and/or Jennifer about the 6 subjects that we've just been talking about? 7 A. Certainly not. 8 Q. Do you recall if during that telephone 9 conference you discussed whether or not Mark Phillips 10 would be a member of HPV or Hunts Point Ven -- excuse 11 me -- a shareholder of Hunts Point Ventures, Inc.? 12 A. There was no discussion on that point. 13 Q. Did you ever have a discussion with Jennifer 14 about whether or not Mark Phillips was or would become 15 a shareholder in Hunts Point Ventures? 16 A. None whatsoever. I've spoken to Jennifer 17 once in my life, and it was that occasion on the phone 18 call with Steve Schweickert and Jennifer Schweickert 19 in late winter or early -- early spring of 2011 for 20 about 20 minutes. 21 Q. And had there been any other in-person or 22 telephone conversa -- conferences with Jennifer 23 Schweickert since then? 24 A. Never. Spoken to her telephonically once, 25 and I've never met the woman. I don't know what she</p>
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<p>1 response to your earlier question, Steve must have 2 initiated the call, because otherwise, when I jump off 3 the line, it would have terminated their call as well. 4 MR. FRANKLIN: That may not be correct. 5 That may not be the case. 6 A. Okay. I -- 7 MR. FRANKLIN: But whatever. 8 A. I guess I'm speculating then. I don't know 9 who initiated that call. Just wasn't important enough 10 for me to remember years later. 11 Q. (By Mr. Kimball) Would you -- 12 MR. KIMBALL: Strike that. 13 Q. (By Mr. Kimball) Would it be accurate to 14 describe your role during that telephone conference as 15 counsel for HPV or Hunts Point Ventures? 16 A. Yes. 17 Q. Okay. 18 Do you recall before the telephone 19 conference occurred whether or not Jennifer had 20 somehow communicated a request to have such a phone 21 call with you and Steve? 22 A. I don't have any recollection on that topic. 23 Q. Okay. 24 A. If I -- if I had known that or been in 25 receipt of that information at any time, it would have</p>	<p>1 looks like. 2 Q. Did you ever tell Jennifer that she would be 3 able to directly benefit or -- 4 MR. KIMBALL: Strike that. 5 Q. (By Mr. Kimball) -- directly or indirectly 6 benefit financially from successful prosecutions of 7 patent infringement actions that you would be 8 handling? 9 A. Not at all. Never. Nothing of the kind. 10 Except to the extent that I assumed that by explaining 11 to her how Hunts Point Ventures was going to make 12 money from patent infringement, I assumed that that 13 was relevant to her transaction, because that money 14 would likely be the source of whatever it was she was 15 to receive, but I never discussed it with 16 Ms. Schweickert. 17 Q. Prior to today's deposition can you 18 summarize -- 19 MR. KIMBALL: Strike that. 20 Q. (By Mr. Kimball) Based on your knowledge 21 prior to today's deposition can you summarize your 22 understanding of the loan structure between Jennifer 23 and Hunts Point Ventures? 24 A. Prior to today? 25 Q. Yes.</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. I think it's ambiguous as to time frame, 2 because I gained no understanding of that topic until 3 the commencement of this case. 4 Q. All right. 5 Let's say prior to the commencement of this 6 case what was your understanding? 7 A. I had no understanding. I never have. 8 Q. All right. 9 A. I understood that Steve Schweickert executed 10 two documents, and prior to the commencement of this 11 case we always wondered if -- which one Jennifer had 12 executed. I've had that conversation with Chad Rudkin 13 and Elizabeth Rudkin many times. 14 That's why I asked Jennifer Schweickert for 15 a copy of whatever the document was, because I knew 16 that there was this thing that was primarily a loan 17 that had a tremendous interest rate, and this other 18 document seemed to provide for an equity acquisition, 19 but we've never known what she went for. 20 Q. And when you say "we always wondered," who 21 are the other parties in "we"? 22 A. Me, Chad Rudkin, and Elizabeth Rudkin. 23 Q. Did Chad Rudkin ever tell you that he did 24 not have a signed document bearing the signatures of 25 both Jennifer and someone on behalf of Hunts Point</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Never touched them. Never knew about them. 2 Left out of the conversation. Steve did everything 3 himself. I saw the unsigned documents for the first 4 time shortly before the commencement of this action, 5 and I first saw a countersigned document upon the 6 commencement of this action. 7 (Marked Deposition Exhibit No. 12.) 8 Q. (By Mr. Kimball) You've been handed a 9 document marked as Exhibit 12. Have you ever seen 10 this document before? 11 A. Well, there's two documents in Exhibit 12. 12 One is an email, and the other is a shareholder 13 minutes -- or a notice of annual shareholder meeting 14 rather. 15 Q. Have you ever seen either of those 16 documents? 17 A. Well, yeah. I mean, I think I drafted the 18 attached notice of annual meeting of shareholders. 19 Q. And that references a meeting to be held on 20 August 27th, 2012, at 2:00 p.m. at Newman Du Wors, 21 LLP, correct? 22 A. Correct. 23 Q. And the sender of the email component of 24 Exhibit 12 appears to be an individual named Lindsey 25 Rowson or Rowson?</p>
<p style="text-align: right;">Page 75</p> <p>1 Ventures? 2 A. Did Chad ever tell me that he did not have a 3 document that was countersigned -- 4 Q. Yes. 5 A. -- by Jennifer? 6 I think Chad had always told me prior to the 7 commencement of this lawsuit that he did not have a 8 copy of any countersigned transaction document from 9 Jennifer. 10 Q. Did he ever tell you why he wondered or was 11 uncertain of what the terms of the loan were? 12 A. Because he had acquired Hunts Point 13 Ventures, and he was trying to get clear on what kind 14 of deal he was saddled with. I mean, he wanted to 15 resolve whatever Jennifer claimed -- whatever 16 Jennifer's claim of right was with respect to 17 whichever of the Hunts Point Ventures entities she was 18 claiming against, and he wanted to know if he owed her 19 money or if she was a shareholder, and if she was a 20 shareholder, what she was a shareholder in. 21 Q. I believe that you've indirectly answered 22 this question, but I'll ask you directly. With regard 23 to loan documents between Jennifer and Hunts Point 24 Ventures, did you ever modify or revise any such 25 documents?</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Lindsey Rowson. That's my paralegal. 2 Q. Okay. 3 Turn, if you would, to the final page of 4 Exhibit 12, which is the page titled "Notice of Annual 5 Meeting of Shareholders." 6 A. Okay. I'm there. 7 Q. There is a list of five items under the 8 purpose of the meeting, and specifically the number 9 three is a reference to, "Discussion of the debt 10 and/or equity interests of Joyce Schweickert, Jennifer 11 Schweickert and Sandy Hoover." 12 Do you see that? 13 A. Correct. 14 Q. When you prepared the last page of 15 Exhibit 12, specifically what were you contemplating 16 or thinking of when you used the language, "Discussion 17 of the debt and/or equity interest of Joyce 18 Schweickert, Jennifer Schweickert and Sandy Hoover"? 19 A. We were attempting to figure out what claims 20 of right specifically Joyce and Jennifer were making, 21 because we didn't know which of the two documents from 22 Steve Jennifer had signed and we didn't know what 23 Joyce's basis was for claiming that she continued to 24 be an interest holder of some kind with respect to 25 Hunts Point Ventures or its assets.</p>

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<p>1 I didn't -- I didn't know if she continued 2 to -- or if she viewed her initial capitalization of 3 Hunts Point Ventures as a loan, even though she'd 4 relinquished her shares, or if she viewed it as a 5 capital contribution that her shares were for, in 6 which case the relinquishment would have eliminated 7 any interest. And I didn't know if she considered 8 that the elimination of that interest was legally 9 valid or binding on her. I just didn't know. 10 And the same is true with Jennifer 11 Schweickert. We didn't know which document she'd 12 signed or what she claims she was owed by Hunts Point 13 Ventures. 14 So Chad and Elizabeth wanted to have this 15 meeting and invite all the stakeholders so that we -- 16 they could tell us what they think they're owed and we 17 could see if we could work out a deal with them to 18 satisfy everybody, because Chad and Elizabeth wanted 19 to make good on all of the debts of Hunts Point 20 Ventures and also resolve any conflicts that might be 21 emerging. 22 Q. Okay. 23 So when you say "we" or "we needed to 24 determine," who are you referring to as "we"? 25 A. Well, Chad and Elizabeth were the sole</p>	<p>1 A. Well, look. You've got Sandy here. She's a 2 secured note holder. You've got Jennifer Schweickert. 3 She's claiming some kind of right with respect to one 4 of the entities, and it's not clear if it's a debt 5 right or an equity right or both. You've got Joyce 6 Schweickert, who's kind of saber rattling and making 7 noises about having some claim of right, although we 8 really didn't know what she either had or thought that 9 she had. 10 And the idea was get everybody together, 11 tell each other about the debts to everybody, discuss 12 how we could run the company in a way that paid 13 everybody back and see if we could work out extensions 14 on maturity dates or some kind of a payment plan or 15 some kind of a subordinated right to go get some other 16 financing, if anybody else wanted to contribute or 17 whatever kind of a global resolution might put the 18 company in a position where it could pay back all its 19 obligations. 20 Q. Did the meeting that is referred to as -- 21 or -- 22 MR. KIMBALL: Strike that. 23 Q. (By Mr. Kimball) Did the meeting which was 24 scheduled to be held on August 27th, 2012, at 25 2:00 p.m. actually occur?</p>
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<p>1 shareholders of Hunts Point Ventures at the time, so 2 they needed to determine that. And they were asking 3 me what I -- for legal advice relating to that, and I 4 was counseling them and, in order to do a complete job 5 of counseling them, needed to know what the relevant 6 stakeholders thought their rights were and what 7 documents had been signed. 8 Q. The bullet item under that at number four 9 reads, "Discussion of Mark Phillips' approaching date 10 of release from federal prison." 11 Do you see that? 12 A. I do. 13 Q. What was on your mind and why was that 14 language included there? 15 A. I think that he and Chad Rudkin had been 16 communicating and that Mark Phillips had stated a 17 claim of right with respect to Hunts Point Ventures or 18 its assets or an employment relationship with Hunts 19 Point Ventures, and that needed to be communicated to 20 all of the shareholders and relevant stakeholders as 21 well, especially to the extent that it impacted a 22 global debt workout or global resolution that would be 23 entered into on the part of Hunts Point Ventures. 24 Q. And specifically what are you referring to 25 when you're talking about a global debt resolution?</p>	<p>1 A. It did. 2 Q. Did it occur at that date and time? 3 A. Yes. 4 Q. And was it that -- did it occur at your 5 offices at 1201 Third Avenue? 6 A. It did. 7 Q. Do you recall who attended the meeting? 8 A. Chad and -- Chad and Elizabeth Rudkin 9 certainly did. Sandy Hoover may have, but Ms. -- 10 Jennifer Schweickert and Joyce Schweickert did not 11 attend the meeting. 12 Q. Did Mark Phillips? 13 A. He did not. He was still incarcerated at 14 that time. 15 Q. Were you present at the meeting? 16 A. I was. 17 (Marked Deposition Exhibit No. 13.) 18 Q. (By Mr. Kimball) You've been handed a 19 document marked as Exhibit 13. Could you take a look 20 at that and let me know if you've ever seen this 21 document before. 22 A. I don't recall having seen this document 23 before. Elizabeth may have run it by me. She 24 prepared it I think. 25 Q. Elizabeth Rudkin?</p>

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<p>1 A. Uh-huh.</p> <p>2 Q. So sitting here today, you don't know if</p> <p>3 you've seen this document before.</p> <p>4 A. I do not.</p> <p>5 Q. Can you tell me what discussion -- based on</p> <p>6 your recollection, what specific discussion occurred</p> <p>7 with regard to Jennifer Schweickert's equity or loan</p> <p>8 position with regard to Hunts Point Ventures?</p> <p>9 A. Nothing except that we didn't know what it</p> <p>10 was or what she believed it was.</p> <p>11 Q. On the second page of Exhibit 13 there is a</p> <p>12 paragraph with bullet points titled "Discussion." Do</p> <p>13 you see that?</p> <p>14 A. I do.</p> <p>15 Q. And there's a reference to, "Status of</p> <p>16 outstanding IP litigation - Reported by John Du Wors"?</p> <p>17 A. Okay.</p> <p>18 Q. Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And do you recall, sitting here today, the</p> <p>21 general nature of what that discussion was?</p> <p>22 A. No.</p> <p>23 Q. What was the status of the outstanding IP</p> <p>24 litigation at that time?</p> <p>25 A. I don't know. I'd have to go back and look</p>	<p>1 A. I don't have a clear recollection, but I</p> <p>2 suspect it was me --</p> <p>3 Q. Okay.</p> <p>4 A. -- if for no other reason than that it uses</p> <p>5 my particular favorite font and formatting of footers.</p> <p>6 Q. In fact, if you compare the content on the</p> <p>7 final page to the "Notice of Annual Meeting of</p> <p>8 Shareholders," which is this attachment to Exhibit 12,</p> <p>9 it appears that the bullet point content appears</p> <p>10 identical; is that correct?</p> <p>11 A. Holy cow, Mark. I think you've got a</p> <p>12 smoking gun there. You caught me drafting both</p> <p>13 documents I just admitted to drafting. I don't know</p> <p>14 if I can go on with this deposition.</p> <p>15 MR. FRANKLIN: It is what it is.</p> <p>16 Q. (By Mr. Kimball) Have you ever heard of a</p> <p>17 company called Hunts Point Venture Group, LLC?</p> <p>18 A. I have.</p> <p>19 Q. And what is your understanding of the nature</p> <p>20 of the business of that company?</p> <p>21 A. The only thing that I've ever known about</p> <p>22 the nature of the business of that company was that</p> <p>23 Steve Schweickert told me he was going to form it for</p> <p>24 the purpose of handling the commercial deployment side</p> <p>25 of the overall Hunts Point Ventures enterprise as</p>
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<p>1 at my case dockets. I don't know what cases were</p> <p>2 settled or dismissed when.</p> <p>3 Q. There's a reference to, "Discussion of the</p> <p>4 debt and/or equity interests of Jennifer Schweickert</p> <p>5 and Sandy Hoover."</p> <p>6 Do you recall specifically what the</p> <p>7 different people attending the meeting discussed at</p> <p>8 that meeting?</p> <p>9 A. Not of Sandy Hoover, except that she</p> <p>10 generally was amenable to agreeing to some kind of a</p> <p>11 workout agreement that -- that allowed the company to</p> <p>12 continue to survive.</p> <p>13 And with respect to Jennifer Schweickert,</p> <p>14 the only discussion I recall was that we were trying</p> <p>15 to figure out how we could get her to the table to</p> <p>16 tell us what -- which deal she'd signed, if any, what</p> <p>17 she thought her rights were, and whether or not we</p> <p>18 thought we could work out a resolution that would</p> <p>19 satisfy her.</p> <p>20 Q. The last page of Exhibit 13 is a document</p> <p>21 titled "Annual Meeting of Shareholders of Hunts Point</p> <p>22 Ventures, Inc. Agenda." Do you see that?</p> <p>23 A. Yep.</p> <p>24 Q. Did you or someone at your office prepare</p> <p>25 this document?</p>	<p>1 distinguished from the patent enforcement</p> <p>2 revenue-generating side, which was Hunt -- Hunts Point</p> <p>3 Ventures, Inc. As of the commencement of this lawsuit</p> <p>4 I actually didn't think that Hunts Point Venture</p> <p>5 Group, LLC, had ever been formed, but as it turns out,</p> <p>6 Steve Schweickert had directed Michael Spain, a</p> <p>7 transaction lawyer at my office, to form it for him.</p> <p>8 (Marked Deposition Exhibit No. 14.)</p> <p>9 Q. (By Mr. Kimball) You've been handed a</p> <p>10 document marked as Exhibit 14. Have you ever seen</p> <p>11 this document before?</p> <p>12 A. Not that I recall.</p> <p>13 Q. In fact, I'll represent to you that this is</p> <p>14 a copy of a certificate of formation for Hunts Point</p> <p>15 Venture Group, LLC, as we've just been discussing.</p> <p>16 A. Okay.</p> <p>17 Q. Take a look, if you would, at the second</p> <p>18 page of Exhibit 14.</p> <p>19 A. Okay.</p> <p>20 Q. Identified therein in Article 6 is a</p> <p>21 registered agent Newman Limited Corporate Services.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And then there's a signature down below</p> <p>25 that, "Signature of Registered Agent," and then next</p>

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<p>1 to that "Printed Name Derek Newman." Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Do you have any reason to believe that that</p> <p>4 is not Derek Newman's signature?</p> <p>5 A. Having never seen this document before, I</p> <p>6 would be speculating entirely as to its authenticity,</p> <p>7 but that sure does look like Derek Newman's electronic</p> <p>8 signature. In other words, I can tell you almost</p> <p>9 assuredly that one of the paralegals at our office</p> <p>10 would have affixed an electronic signature on that --</p> <p>11 on this document. I'm sure Derek Newman -- Newman</p> <p>12 didn't sign it himself.</p> <p>13 Q. And then taking a look at Article 7, the</p> <p>14 executor of the document is identified as, "Newman &</p> <p>15 Newman, Attorneys at Law." Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And then below "Signature of Executor"</p> <p>18 "Printed Name Derek Newman." Do you see that?</p> <p>19 A. Yep.</p> <p>20 Q. And, again, do you have any reason to</p> <p>21 believe that that is not either Mr. Newman's signature</p> <p>22 or his electronic signature, as --</p> <p>23 A. I --</p> <p>24 Q. -- used in your office?</p> <p>25 A. I recognize the form of the signature as</p>	<p>1 not Jennifer was supposed to receive an ownership</p> <p>2 interest in Hunts Point Venture Group, LLC?</p> <p>3 A. Well, I think that was the subject of one of</p> <p>4 the two notes that Steve Schweickert prepared and sent</p> <p>5 to Jennifer. My recollection was that she got perhaps</p> <p>6 an 8 percent interest, but I have never, until the</p> <p>7 commencement of this lawsuit, known which of those</p> <p>8 deals she entered into, and therefore, I've never</p> <p>9 known if she did or did not have an interest in Hunts</p> <p>10 Point Venture Group, LLC. And that sort of is further</p> <p>11 reinforced by the fact that prior to the commencement</p> <p>12 of this lawsuit and I started looking into this stuff,</p> <p>13 prior to that I didn't know that Hunts Point Venture</p> <p>14 Group, LLC, had actually been formed.</p> <p>15 Q. When you said that it was your recollection</p> <p>16 that she had or may have had an 8 percent interest in</p> <p>17 the company, what are you basing that on?</p> <p>18 A. When I sign -- finally saw those two notes</p> <p>19 that weren't countersigned that Steve Schweickert had</p> <p>20 apparently created and sent to her, my recollection is</p> <p>21 that one of those notes provided for an ownership</p> <p>22 interest in Hunts Point Venture Group, LLC, as</p> <p>23 consideration for the capital contribution she had</p> <p>24 made in early 2011.</p> <p>25 Q. Did you ever have a discussion with Mark</p>
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<p>1 match -- matching Derek's. As I said before, I have</p> <p>2 no personal knowledge with respect to this document,</p> <p>3 but --</p> <p>4 Q. All right.</p> <p>5 A. -- but if -- if it weren't the case that the</p> <p>6 document speaks for itself, you've certainly spoken</p> <p>7 for it accurately.</p> <p>8 Q. Did you or anyone at your office ever draft</p> <p>9 bylaws or any other corporate documents for Hunts</p> <p>10 Point Venture -- Hunts -- Hunts Point Venture Group,</p> <p>11 LLC?</p> <p>12 A. I certainly did not. I have no knowledge</p> <p>13 whether or not someone else in my office, such as</p> <p>14 Michael Spain, did so.</p> <p>15 Q. Have you ever discussed any corporate</p> <p>16 governance documents for Hunts Point Venture Group,</p> <p>17 LLC, with either Mr. Spain or Derek Newman?</p> <p>18 A. No.</p> <p>19 Q. Did anyone ever tell you if Hunts Point</p> <p>20 Venture Group, LLC, actually was up and running and</p> <p>21 conducting business?</p> <p>22 A. I've had no such conversation other than</p> <p>23 privileged conversations with my attorneys about that</p> <p>24 question.</p> <p>25 Q. Did anyone ever discuss with you whether or</p>	<p>1 Phillips about whether or not Hunts Point Venture</p> <p>2 Group existed?</p> <p>3 A. No.</p> <p>4 Q. Did you ever inform Jennifer that Mark</p> <p>5 Phillips knew about Hunts Point Venture Group?</p> <p>6 A. No.</p> <p>7 Q. Do you know if there was ever a licensing</p> <p>8 agreement executed between Hunts Point Venture --</p> <p>9 Hunts Point Ventures, Inc., and Hunts Point Venture</p> <p>10 Group, LLC?</p> <p>11 A. I have no independent knowledge of any</p> <p>12 licensing agreement ever having been entered into</p> <p>13 between those two entities. However, I feel strongly</p> <p>14 confident that none has ever been created.</p> <p>15 MR. KIMBALL: Okay. You indicated earlier</p> <p>16 that you needed to --</p> <p>17 THE WITNESS: Well --</p> <p>18 MR. KIMBALL: -- terminate --</p> <p>19 THE WITNESS: -- tell me what you've got.</p> <p>20 MR. KIMBALL: -- at 3:00.</p> <p>21 THE WITNESS: I mean, I have -- yeah. So I</p> <p>22 have an important family event that I want to go to,</p> <p>23 but if you have a half hour of questions left, I don't</p> <p>24 want to leave and come back for a half hour. If you</p> <p>25 have an hour of questions left, that might be fine, as</p>

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John Du Wors

July 18, 2014

<p style="text-align: right;">Page 90</p> <p>1 long as we really cap it there. But if you've got two</p> <p>2 hours of questions left and I'm coming back anyway,</p> <p>3 let's just end now.</p> <p>4 MR. KIMBALL: I think it's the latter. I'm</p> <p>5 at page -- in the middle of page five out of nine</p> <p>6 pages, so --</p> <p>7 MR. FRANKLIN: Okay.</p> <p>8 MR. KIMBALL: So --</p> <p>9 THE WITNESS: Yeah. Let's beat the traffic</p> <p>10 back to the city then.</p> <p>11 MR. FRANKLIN: All right.</p> <p>12 (Deposition recessed at 3:01 p.m.)</p> <p>13 (Signature reserved.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 92</p> <p>1 CERTIFICATE</p> <p>2 STATE OF WASHINGTON)</p> <p>3) ss.</p> <p>4 COUNTY OF KING)</p> <p>5 I, the undersigned Washington Certified Court</p> <p>6 Reporter, hereby certify that the foregoing deposition</p> <p>7 upon oral examination of JOHN DU WORS was taken before</p> <p>8 me on July 18, 2014, and transcribed under my</p> <p>9 direction;</p> <p>10 That the witness was duly sworn by me pursuant</p> <p>11 to RCW 5.28.010 to testify truthfully; that the</p> <p>12 transcript of the deposition is a full, true, and</p> <p>13 correct transcript to the best of my ability; that I</p> <p>14 am neither attorney for nor a relative or employee of</p> <p>15 any of the parties to the action or any attorney or</p> <p>16 counsel employed by the parties hereto, nor am I</p> <p>17 financially interested in its outcome;</p> <p>18 I further certify that in accordance with</p> <p>19 CR 30(e), the witness was given the opportunity to</p> <p>20 examine, read, and sign the deposition within 30 days</p> <p>21 upon its completion and submission, unless waiver of</p> <p>22 signature was indicated in the record.</p> <p>23 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>24 this 24th day of July, 2014.</p> <p>25</p> <p style="text-align: right;">_____ LAUREN G. HARTY, CCR #2674</p>																																																			
<p style="text-align: right;">Page 91</p> <p>1 SIGNATURE</p> <p>2</p> <p>3 I declare under penalty of perjury under the</p> <p>4 laws of the State of Washington that I have read my</p> <p>5 within deposition, and the same is true and accurate,</p> <p>6 save and except for changes and/or corrections, if</p> <p>7 any, as indicated by me on the CHANGE SHEET flyleaf</p> <p>8 page hereof.</p> <p>9 Signed in _____, Washington, this</p> <p>10 _____ day of _____, 2014.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 JOHN DU WORS</p> <p>16 Taken: July 18, 2014</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Re: Schweickert v. Hunts Point</p> <p>25 Cause No.: 13-CV-675</p> <p>Lauren G. Harty, RPR, CCR #2674</p>	<p style="text-align: right;">Page 93</p> <p>1</p> <p>2 SEATTLE DEPOSITION REPORTERS, LLC</p> <p>3 600 University Street, Suite 320</p> <p>4 Seattle, Washington 98101</p> <p>5 206.622.6661</p> <p>6 CHANGE SHEET</p> <p>7 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,</p> <p>8 SHOWING PAGE, LINE AND REASON.</p> <p>9</p> <table border="1"> <thead> <tr> <th>PAGE</th> <th>LINE</th> <th>CORRECTION AND REASON</th> </tr> </thead> <tbody> <tr><td>10</td><td>---</td><td>---</td></tr> <tr><td>11</td><td>---</td><td>---</td></tr> <tr><td>12</td><td>---</td><td>---</td></tr> <tr><td>13</td><td>---</td><td>---</td></tr> <tr><td>14</td><td>---</td><td>---</td></tr> <tr><td>15</td><td>---</td><td>---</td></tr> <tr><td>16</td><td>---</td><td>---</td></tr> <tr><td>17</td><td>---</td><td>---</td></tr> <tr><td>18</td><td>---</td><td>---</td></tr> <tr><td>19</td><td>---</td><td>---</td></tr> <tr><td>20</td><td>---</td><td>---</td></tr> <tr><td>21</td><td>---</td><td>---</td></tr> <tr><td>22</td><td>---</td><td>---</td></tr> <tr><td>23</td><td>---</td><td>---</td></tr> <tr><td>24</td><td>---</td><td>---</td></tr> <tr><td>25</td><td>---</td><td>---</td></tr> </tbody> </table> <p>24</p> <p>25</p> <p style="text-align: right;">_____ JOHN DU WORS</p> <p>Taken: July 18, 2014</p>	PAGE	LINE	CORRECTION AND REASON	10	---	---	11	---	---	12	---	---	13	---	---	14	---	---	15	---	---	16	---	---	17	---	---	18	---	---	19	---	---	20	---	---	21	---	---	22	---	---	23	---	---	24	---	---	25	---	---
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JENNIFER P. SCHWEICKERT,)
)
Plaintiff,)
)
vs.) Case Number:
)
HUNTS POINT VENTURES, INC., HUNTS) 13-CV-675
POINT VENTURE GROUP, LLC; CHAD)
RUDKIN and ELIZABETH RUDKIN, and)
their marital community comprised)
thereof; JOHN DU WORS and AMBER)
DU WORS, and their marital)
community comprised thereof; and)
DOES 1-4,)
)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION
OF
JOHN DU WORS
VOLUME II

10:21 a.m.
August 25, 2014
777 108th Avenue NE, Suite 2170
Bellevue, Washington

Lauren G. Harty, RPR, CCR #2674
Court Reporter

John Du Wors

August 25, 2014

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<p>1 2 A P P E A R A N C E S 3 4 5 FOR PLAINTIFF: MR. MARK D. KIMBALL 6 MR. BRANDON P. WAYMAN 7 MDK Law Associates 8 777 108th Avenue N.E., Suite 2170 9 Bellevue, Washington 98004 10 425.455.9610 11 mark@mdklaw.com 12 13 14 FOR DEFENDANTS DU WORS: 15 MS. PAMELA J. DeVET 16 Lee Smart 17 701 Pike Street, Suite 1800 18 Seattle, Washington 98101-3929 19 206.624.7990 20 pjd@leesmart.com 21 22 23 24 25</p>	<p>1 E X H I B I T I N D E X 2 EX# DESCRIPTION PAGE 3 22 11/19/2012 "SHARE PURCHASE AGREEMENT 170 4 HUNTS POINT VENTURES, INC., - STEVE 5 SCHWEICKERT." 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 95	Page 97
<p>1 E X A M I N A T I O N I N D E X 2 ATTORNEY PAGE 3 BY MR. KIMBALL: 96 4 E X H I B I T I N D E X 5 EX# DESCRIPTION PAGE 6 15 10/2011 "SETTLEMENT AGREEMENT" by and 113 7 between Hunts Point Ventures, Inc., and 8 digEcor. 9 16 Email thread ending 11/23/2012 from John 126 10 Du Wors to Chad Rudkin. 11 17 11/19/2012 "SECURITY AGREEMENT" by and 133 12 between Hunts Point Ventures and Sandy 13 Hoover. 14 18 1/14/2013 "SECURED PROMISSORY NOTE" by 149 15 and between Hunts Point Ventures, Inc., 16 and Sandy Hoover. 17 19 12/31/2010 "STOCK REDEMPTION AND 160 18 INDEMNIFICATION AGREEMENT" by and between 19 Hunts Point Ventures, Inc., and Joy 20 Schweickert. 21 20 3/14/2011 invoice from Newman & Newman to 161 22 Hunts Point Ventures, Inc. 23 21 5/29/2012 "HUNT POINT VENTURES, INC. 166 24 JOINT CONSENT IN LIEU OF ANNUAL MEETING 25 OF SHAREHOLDERS AND DIRECTORS."</p>	<p>1 JOHN DU WORS, being duly sworn, testified 2 upon oath, as follows: 3 E X A M I N A T I O N 4 BY MR. KIMBALL: 5 Q. Mr. Du Wors, thank you for coming today. As 6 you know, this is a continuation of the deposition 7 which was previously conducted on July 18th of 2014 8 here in the offices. And it is my understanding that 9 Mr. Franklin will not be here today and, instead, you 10 are being represented by Ms. DuVet; is that correct? 11 A. It is. 12 Q. All right. 13 MR. KIMBALL: Ready? 14 Q. (By Mr. Kimball) Mr. Du Wors, during a 15 previous deposition we talked about a telephone 16 conference call that occurred in approximately April 17 of 2011 regarding Jennifer Schweickert's loan to HPV. 18 Do you recall at all your testimony and that subject 19 being addressed previously? 20 A. Only in the most general sense. 21 Q. Okay. 22 Do you recall who the parties were on that 23 telephone call? 24 A. Steve Schweickert, me, and Jennifer 25 Schweickert.</p>

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<p>1 Q. And were all of the parties on the telephone</p> <p>2 call at the same time or do you recall if any of them</p> <p>3 joined later or left early?</p> <p>4 A. At the beginning of the call it is my vague</p> <p>5 recollection that I was on the phone with Steve</p> <p>6 Schweickert for a manner of second -- for a matter of</p> <p>7 seconds before Jennifer Schweickert was on the call.</p> <p>8 I do not, however, specifically recall how</p> <p>9 the conferencing functionality was executed for that</p> <p>10 call. In other words, it might have been that Steve</p> <p>11 called me and then joined Jennifer. It might have</p> <p>12 been that Steve called me and asked me to join</p> <p>13 Jennifer. It might have been that I called Steve and</p> <p>14 then he joined Jennifer.</p> <p>15 I believe it's the case that Steve contacted</p> <p>16 me and then joined Jennifer using his own telephone's</p> <p>17 functionality, and the reason I believe that's the</p> <p>18 case is that at the end of the call in which the three</p> <p>19 of us participated he asked that I jump off the call</p> <p>20 and allow him to continue communicating with Jennifer</p> <p>21 Schweickert, which causes me to believe based on that</p> <p>22 recollection, however vague it is, and it is vague,</p> <p>23 that he must have arranged the telephone conferencing,</p> <p>24 because if I had done so, my exit from the call would</p> <p>25 have terminated the call between Steve and Jennifer.</p>	<p>1 Where were you during this telephone call?</p> <p>2 A. My office in Seattle.</p> <p>3 Q. Were there any other people with you in your</p> <p>4 office during the phone call?</p> <p>5 A. No.</p> <p>6 Q. During any part of the phone call were there</p> <p>7 any other people?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 So I believe you've answered this already,</p> <p>11 but can you -- was Chad Rudkin in your office during</p> <p>12 the phone call?</p> <p>13 A. No.</p> <p>14 Q. And was he a participant in the phone call</p> <p>15 at any time by conference?</p> <p>16 A. No.</p> <p>17 Q. Sitting here today can you give me a general</p> <p>18 description again of what it was you discussed during</p> <p>19 the phone call.</p> <p>20 A. Two principal things that I recall. One, I</p> <p>21 described how revenues are generated by suing to</p> <p>22 enforce patents for infringement where the plaintiff</p> <p>23 is a nonpracticing entity. Two, I described that the</p> <p>24 proceeds of the funds Jennifer was contemplating</p> <p>25 contributing would be used to pay me to defend Mark</p>
Page 99	Page 101
<p>1 And I feel reasonably certain that Jennifer was not</p> <p>2 using her own telephone to arrange the conferencing</p> <p>3 functionality.</p> <p>4 Q. Okay.</p> <p>5 A. So thereafter, my assumption, based on</p> <p>6 Steve's statement to me, is that Jennifer and Steve</p> <p>7 continued to speak. And, of course, as I've told you,</p> <p>8 my vague recollection is that Steve and I spoke for a</p> <p>9 matter of seconds before Jennifer was joined to the</p> <p>10 call.</p> <p>11 Q. During those seconds or the period of time</p> <p>12 when you were speaking with Steve, if, in fact, that</p> <p>13 was the case and it was just him on the phone, is it</p> <p>14 fair to say that the only thing that would have been</p> <p>15 discussed would be something about the logistics of</p> <p>16 adding Jennifer to the call as opposed to something</p> <p>17 substantive?</p> <p>18 A. My recollection of that interaction is so</p> <p>19 vague that I do not know if we even talked about</p> <p>20 anything. My assumption would be that to the extent</p> <p>21 an exchange took place between myself and Steve in</p> <p>22 that brief period, it would have related to the</p> <p>23 administrative function of joining Jennifer to the</p> <p>24 call.</p> <p>25 Q. All right.</p>	<p>1 Phillips criminally.</p> <p>2 Q. During the telephone call did she agree with</p> <p>3 you that the funds would be used to pay you for that</p> <p>4 work?</p> <p>5 A. I do not recall her stating any agreement or</p> <p>6 disagreement or any position on the subject other than</p> <p>7 perhaps a general verbal acknowledgment that she</p> <p>8 understood the intended use and dispositions of the</p> <p>9 proceeds of that financial contribution.</p> <p>10 Q. Do you recall if there were any follow-up</p> <p>11 emails or letters or other correspondence or</p> <p>12 memorialization about the use of funds from Jennifer?</p> <p>13 A. I do not recall being a party to any such</p> <p>14 written communication.</p> <p>15 Q. And, again, what was the amount or the</p> <p>16 approximate amount that Jennifer was going to be</p> <p>17 paying that would go toward your fees?</p> <p>18 A. At some point --</p> <p>19 Well, that would go toward my fees?</p> <p>20 Q. Yes.</p> <p>21 A. I was never advised of what portion of the</p> <p>22 proceeds of her financial contribution would be</p> <p>23 devoted to the payment of my professional fees. At</p> <p>24 some point I learned that the total amount of her</p> <p>25 contribution was \$200,000, but I've never had</p>

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<p>1 knowledge as to how that was or -- was to be divided 2 or used or disposed of. 3 Q. Were the fees or part of the fees that 4 Jennifer put in, this \$200,000, did any portion of 5 those fees come directly to your office from Jennifer? 6 A. No. 7 Q. How did they get applied to your bill? 8 A. I don't know. That would have been Steve's 9 accounting decision making. 10 Q. And you described generally, I believe, that 11 these funds were going to be used for prosecution of 12 enforcement activity against people who were using IP 13 that were -- you believed were not entitled to; is 14 that correct? 15 A. That statement contains a number of 16 assumptions that are false, and it's compound in that 17 regard, and it also misstates my prior testimony. 18 Q. Okay. 19 What portions of my question contained -- 20 MR. KIMBALL: Or strike that. 21 Q. (By Mr. Kimball) What -- what portions of 22 the question I just interposed were false? 23 A. The -- well, you've misstated my prior 24 testimony because I've just told you -- I described 25 that Jennifer's money would be used as a -- I</p>	<p>1 plaintiff is a nonpracticing entity. What did you 2 mean by that? 3 A. In the context of patent infringement 4 litigation there are at least two kinds of plaintiffs, 5 plaintiffs which practice the patent in suit and 6 plaintiffs who do not practice the patent in suit. 7 Plaintiffs who practice the patent in suit 8 are entitled, upon success, to certain remedies that 9 plaintiffs who do not practice the patent in suit are 10 not entitled to. 11 Those plaintiffs not practicing the patent 12 in suit are referred to generally within the industry 13 as nonpracticing entities and colloquially, if not 14 pejoratively, as trolls. 15 Q. Do you know if there was any agreement, 16 either formal or informal, between HPV and 17 Ms. Schweickert that the \$200 she contributed would be 18 repaid? 19 A. I assume you mean the \$200,000. 20 Q. 200,000. I'm sorry. 21 A. Because if it's 200, I'll give that to her 22 right now. 23 Q. 200,000. 24 A. I might have it on me. 25 Q. 200,000.</p>
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<p>1 understood, at least in part, to pay my criminal -- my 2 bill for criminally defending Mark Phillips, but your 3 question presupposed that I had just said that I was 4 using those funds to prosecute claims. 5 The use of the term "prosecute" is vague in 6 the patent setting because it does not distinguish 7 whether or not you mean prosecute a patent in the 8 sense of administratively justifying its existence to 9 the United States Patent and Trademark Office or 10 pursuing affirmative tort claims of patent 11 infringement pursuant to the Patent Act. 12 Moreover, you have presupposed that I had an 13 independent belief as to entitlement of the defendants 14 or putative defendants sued or to be sued through 15 enforcement of the patents. And unless we speak 16 specifically about the claims and claim charts and 17 accused infringing technologies at issue, I can't tell 18 you whether or not I had any such affirmative belief 19 or whether or not I believed that there was a basis 20 consistent with Rule 11 to assert claims of 21 infringement with respect to the claims asserted 22 and -- on the one hand and the accused infringing 23 technologies on the other hand. 24 Q. A few moments ago in one of your responses 25 you referred to a term plaintiff is a -- where</p>	<p>1 A. Your question is do I currently have any 2 independent knowledge responsive to that question? 3 Q. Yes. 4 A. My current knowledge is based on hearsay and 5 documents whose authenticity I am not able to confirm, 6 so I do not independently know if any such agreement 7 existed. 8 At the time that I assume from Steve 9 Schweickert's comments that the transaction was 10 executed Steve Schweickert did not specify to me what 11 the terms of the transaction were. I did not know if 12 the transaction contemplated was to include an equity 13 component or debt component or both. 14 Later I saw from I believe Chad Rudkin two 15 documents relating to the \$200 sup -- or \$200,000 16 supposed financial contribution both with -- both 17 bearing what I a -- what I understood to be Steve 18 Schweickert's signature with differing deal terms. 19 I did not learn until the commencement of 20 this lawsuit which, if any, of whose two documents 21 Jennifer Schweickert countersigned. Upon commencement 22 of the lawsuit I believe Ms. Schweickert submitted a 23 document with her countersignature electing one of 24 those deal structures. I do not know if she signed 25 the other document.</p>

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<p>1 Additionally, since then the receiver and</p> <p>2 the receiver's attorney have advised me that indeed</p> <p>3 Mr. Schweickert generated four written memoranda with</p> <p>4 four separate deal structures and that he executed all</p> <p>5 four.</p> <p>6 Therefore, to the extent that I have</p> <p>7 knowledge, it is not personal knowledge but, rather,</p> <p>8 based on what people have said to me.</p> <p>9 Q. And when you're referring to</p> <p>10 Mr. Schweickert, you're referring to Steve</p> <p>11 Schweickert?</p> <p>12 A. Sure.</p> <p>13 As opposed to who?</p> <p>14 Q. You identified Mr. Schweickert.</p> <p>15 A. That's the only Schweickert -- only</p> <p>16 Mr. Schweickert I've met.</p> <p>17 Q. Right.</p> <p>18 You indicated that you had some information</p> <p>19 as well based on hearsay? What were you referring to</p> <p>20 specifically?</p> <p>21 A. The comments of Diana Carey, Mark Calvert,</p> <p>22 perhaps Mark Cal -- Calvert's additional counsel,</p> <p>23 whose name I don't recall, Steve Schweickert, Chad</p> <p>24 Rudkin, and Elizabeth Rudkin.</p> <p>25 Q. What did Elizabeth Rudkin say about the</p>	<p>1 A. Only very general information that some kind</p> <p>2 of transaction occurred, that the amount of the fin --</p> <p>3 financial contribution by Jennifer Schweickert</p> <p>4 associated with the transaction amounted to \$200,000</p> <p>5 and that -- he may have said that he gave her the</p> <p>6 option of two different deal structures. I have a</p> <p>7 very vague recollection that he once told me he</p> <p>8 offered her two different alternative deal structures.</p> <p>9 Q. And, again, could one of those be</p> <p>10 characterized generally as debt and the other</p> <p>11 characterized generally as equity?</p> <p>12 A. Well, you asked the question "could," and</p> <p>13 within the boundaries of reality, I suppose that</p> <p>14 anything's possible. Again, I have no independent</p> <p>15 personal knowledge of what the deal structures were.</p> <p>16 I can only say that since then two documents</p> <p>17 have been circulated to me by Elizabeth and Chad</p> <p>18 Rudkin, and my general recollection of the substance</p> <p>19 of those two documents is that one contained an equity</p> <p>20 component as well as a debt component while the other</p> <p>21 contained a debt component and a fee component. And</p> <p>22 as I generally recall, both included an interest</p> <p>23 component.</p> <p>24 Q. I believe you also indicated that you had</p> <p>25 some discussion with Mark Calvert concerning the</p>
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<p>1 documents -- or about the transaction?</p> <p>2 A. I do not have a specific recollection of the</p> <p>3 text or precise verbiage of any of Ms. Rudkin's</p> <p>4 comments in that regard except to say in the most</p> <p>5 general substantive sense that Steve had circulated to</p> <p>6 Jennifer Schweickert two signed deal documents and</p> <p>7 that we -- neither we -- neither they, being the</p> <p>8 Rudkins, nor Steve Schweickert knew which of those</p> <p>9 documents Ms. Jennifer Schweickert had executed.</p> <p>10 Q. And you indicated as well that you had some</p> <p>11 information of a hearsay nature concerning Chad</p> <p>12 Rudkin; is that correct?</p> <p>13 A. Sure. Yes.</p> <p>14 Q. And what was that information?</p> <p>15 A. Substantially the same comments as</p> <p>16 Ms. Elizabeth Rudkin on the topic of not knowing which</p> <p>17 of the two deal documents Ms. Jennifer Schweickert had</p> <p>18 executed. And, again, with respect to Mr. Rudkin I</p> <p>19 don't have a specific recollection of the precise</p> <p>20 verbiage or text of any comment that he made to me.</p> <p>21 Q. Do you have any comments --</p> <p>22 MR. KIMBALL: Strike that.</p> <p>23 Q. (By Mr. Kimball) Do you have any information</p> <p>24 provided to you by Steve Schweickert about this</p> <p>25 transaction?</p>	<p>1 transaction; is that correct?</p> <p>2 A. Very limited discussion.</p> <p>3 Q. And what was that discussion?</p> <p>4 A. At an interview with the receiver Mark</p> <p>5 Calvert, his counsel, Diana Carey, his separate</p> <p>6 counsel, whose name I don't recall, and an associate</p> <p>7 from Diana Carey's law firm, or a woman who I</p> <p>8 understood to be an associate from Mark -- Diana</p> <p>9 Carey's law firm, I told them substantially the same</p> <p>10 thing I just told you with respect to those two deal</p> <p>11 memoranda I became aware of and my involvement in the</p> <p>12 transaction with Steve Schweickert and Jennifer</p> <p>13 Schweickert and Mark Calvert.</p> <p>14 And I believe at least Dana -- Diana Carey</p> <p>15 also commented somewhat incredulously that, in fact,</p> <p>16 there had not only been two deal memoranda generated</p> <p>17 by Steve Schweickert and circulated to Jennifer</p> <p>18 Schweickert but, in fact, four.</p> <p>19 Q. Mr. Du Wors, I'm handing you a document</p> <p>20 marked as Exhibit 6, which was an exhibit from your --</p> <p>21 the prior session in this deposition. I'd like you to</p> <p>22 turn to page 16 and take a look at paragraph 54, if</p> <p>23 you could.</p> <p>24 A. Okay. I'm looking at 54 of 108.</p> <p>25 Q. And specifically beginning around page --</p>

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<p>1 or -- excuse me -- line ten or eleven of page 16</p> <p>2 there's a sentence which reads, "However, behind the</p> <p>3 scenes Mr. Du Wors was telling Chad and me something</p> <p>4 much different. In March 2011 Mr. Du Wors had</p> <p>5 threatened Chad and me by saying that if we couldn't</p> <p>6 come up with a way to generate money for HPV in order</p> <p>7 to pay his outstanding legal fees of \$117,652.57, he</p> <p>8 would file a lien against the Phillips IP and</p> <p>9 foreclose on it and quit working on Mark's cases."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Is any part or parts of that sentence I have</p> <p>13 just read false?</p> <p>14 A. I believe that almost all of it is false,</p> <p>15 except perhaps that I may have said that absent</p> <p>16 payment to the firm, I would be required to withdraw</p> <p>17 from continuing representation of Mark Phillips, and</p> <p>18 on that topic I only have the vaguest of</p> <p>19 recollections.</p> <p>20 Q. Did you ever discuss the idea of filing a</p> <p>21 lien against the assets of HPV?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Is it possible that it could have been</p> <p>24 discussed?</p> <p>25 A. Within the boundaries of reality, anything</p>	<p>1 Q. How many complaints did you file --</p> <p>2 A. I --</p> <p>3 Q. -- or claims?</p> <p>4 A. I don't know that I specif --</p> <p>5 Claims?</p> <p>6 Q. Claims.</p> <p>7 A. What do you mean by the term "claims"?</p> <p>8 Q. Complaints.</p> <p>9 A. I believe it was four.</p> <p>10 Q. Do you recall who they were filed against?</p> <p>11 A. Epson, digEcor, Tonium. I don't recall the</p> <p>12 fourth.</p> <p>13 Q. Can you spell Tonium for the record?</p> <p>14 A. T-O-N-I-U-M.</p> <p>15 Q. And can you spell Epson for the record.</p> <p>16 A. E-P-S-O-N.</p> <p>17 Q. In any of the four complaints that you filed</p> <p>18 did any of them ever produce or result in a settlement</p> <p>19 in favor of HPV concerning ownership of the IP and/or</p> <p>20 infringement?</p> <p>21 A. The settlement would not concern an</p> <p>22 ownership of the intellectual property asserted within</p> <p>23 those complaints.</p> <p>24 Q. Were there settlements reached in any of the</p> <p>25 complaints?</p>
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<p>1 is possible.</p> <p>2 Q. So your answer is "Yes"?</p> <p>3 A. My answer is that within the boundaries of</p> <p>4 reality, anything is possible.</p> <p>5 Q. Is that possible?</p> <p>6 A. Is what possible?</p> <p>7 Q. That you could have had discussion with Chad</p> <p>8 and Mr. Schweickert regarding the filing of a lien?</p> <p>9 A. It doesn't sound like something I would say.</p> <p>10 To -- within the boundaries of reality, anything is</p> <p>11 possible, and I have no independent recollection of</p> <p>12 ever having made any such comment.</p> <p>13 Q. Okay.</p> <p>14 Do you have any independent recollection</p> <p>15 sitting here today that you did not make such a</p> <p>16 comment?</p> <p>17 A. I have no independent recollection on the</p> <p>18 subject whatsoever.</p> <p>19 Q. Thank you.</p> <p>20 A. Although I've got a pretty good memory, so</p> <p>21 if I don't remember saying it, I'm going to guess that</p> <p>22 I didn't say it.</p> <p>23 Q. Did you ever file any patent infringement</p> <p>24 claims on behalf of HPV?</p> <p>25 A. Yes.</p>	<p>1 A. Two of them.</p> <p>2 Q. And against which parties?</p> <p>3 A. Epson and digEcor.</p> <p>4 (Discussion off the record.)</p> <p>5 (Marked Deposition Exhibit No. 15.)</p> <p>6 Q. (By Mr. Kimball) Mr. Du Wors, you've just</p> <p>7 been handed a document marked as Exhibit 15. Have you</p> <p>8 ever seen this document before?</p> <p>9 A. It looks familiar, but I can't confirm that</p> <p>10 I've seen it.</p> <p>11 Q. This appears to be a document titled</p> <p>12 "SETTLEMENT AGREEMENT" and references Hunts Point</p> <p>13 Ventures, Inc., and digEcor -- that's D-I-G-E-C-O-R --</p> <p>14 digEcor, Inc.</p> <p>15 Do you recall if this could be a</p> <p>16 memorialization of the settlement agreement that you</p> <p>17 referred to a moment ago regarding HPV and digEcor?</p> <p>18 A. As anything possible -- is possible, it</p> <p>19 certainly could be.</p> <p>20 Q. Do you believe this to be the same document?</p> <p>21 A. I don't have a belief or opinion on the</p> <p>22 subject.</p> <p>23 Q. Is this a document that you participated in</p> <p>24 drafting?</p> <p>25 A. I did not draft the settlement agreement</p>

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<p>1 between digEcor and Hunts Point Ventures.</p> <p>2 Q. So your testimony is you did not participate</p> <p>3 in the drafting of the -- of Exhibit 15.</p> <p>4 A. I don't have an independent recollection of</p> <p>5 having participated in the drafting of it, no.</p> <p>6 Q. Is it fair to say that you don't know either</p> <p>7 way?</p> <p>8 A. It's fair to say that I did not prepare the</p> <p>9 document, edit the document, or execute the document.</p> <p>10 I may have expressed my opinion on what substantive</p> <p>11 provisions within the document were acceptable</p> <p>12 based -- in the context of conversations with Derek</p> <p>13 Linke.</p> <p>14 Q. And who is Derek Linke?</p> <p>15 A. An attorney in my office whom I believe to</p> <p>16 have prepared the settlement in that case.</p> <p>17 Q. Do you know if Mr. Linke participated in</p> <p>18 drafting Exhibit 15?</p> <p>19 A. Again, I am not able to authenticate</p> <p>20 Exhibit 15 on personal knowledge, so I would have to</p> <p>21 speculate as to whether or not Mr. Linke participated</p> <p>22 in the preparation of that document.</p> <p>23 Q. The company referred to in the first</p> <p>24 paragraph, part two of Exhibit 15 is a company</p> <p>25 identified as digEcor, Inc., a Washington corporation.</p>	<p>1 digEcor was ultimately determined to be for purposes</p> <p>2 of the settlement agreement?</p> <p>3 A. Not specifically.</p> <p>4 Q. Okay.</p> <p>5 Without regard to whether or not you knew</p> <p>6 what the full settlement price was, do you know if the</p> <p>7 full settlement price was actually paid by digEcor?</p> <p>8 A. I have a general recollection that it was.</p> <p>9 Q. Did the money go directly to HPV or did it</p> <p>10 go through your office?</p> <p>11 A. I don't know. Our usual practice would be</p> <p>12 that it goes to our law firm's trust account and is</p> <p>13 reduced by, at minimum, the amount of our contingent</p> <p>14 fee and costs, with the balance remitted to the</p> <p>15 client, but I don't have independent knowledge of</p> <p>16 whether or not that occurred in this case.</p> <p>17 Q. All right.</p> <p>18 Do you know if any portion of the settlement</p> <p>19 proceeds in the digEcor matter were paid to HPVG?</p> <p>20 A. I have no recollection of that and, based on</p> <p>21 the absence of any such recollection, believe that was</p> <p>22 not the case.</p> <p>23 Q. Do you recall discussing with anyone whether</p> <p>24 or not a portion of the settlement proceeds were being</p> <p>25 considered to be paid to HPVG?</p>
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<p>1 How did you first learn of a company called digEcor,</p> <p>2 Inc.?</p> <p>3 A. I learned of digEcor, Inc., through our</p> <p>4 pre-complaint investigation precedent to the</p> <p>5 initiation of Hunts Point Ventures' action against</p> <p>6 digEcor for patent infringement.</p> <p>7 Q. What kind of business was digEcor, Inc., in?</p> <p>8 A. I understood that at least part of their</p> <p>9 business activities appeared, based on the information</p> <p>10 I reviewed, to include the manufacture and commercial</p> <p>11 distribution of handheld digital media players used to</p> <p>12 be rented and/or given to customers on Alaska Airlines</p> <p>13 air flights.</p> <p>14 Q. Did you negotiate any of the substantive</p> <p>15 terms of the settlement agreement between HPV and</p> <p>16 digEcor?</p> <p>17 A. The price.</p> <p>18 Q. And when you refer to "the price," do you</p> <p>19 mean the price that digEcor would pay to Hunts Point</p> <p>20 Ventures?</p> <p>21 A. I do.</p> <p>22 Q. And was that \$120,000?</p> <p>23 A. I don't recall.</p> <p>24 Q. So sitting here today you do not recall what</p> <p>25 the price of the settlement of the claims against</p>	<p>1 A. I recall no such discussion.</p> <p>2 Q. Do you recall seeing any emails or</p> <p>3 correspondence on that subject?</p> <p>4 A. I don't recall seeing any such</p> <p>5 correspondence or email communication.</p> <p>6 Q. You indicated you had -- did not have a</p> <p>7 specific recollection of what happened to the</p> <p>8 settlement proceeds in the digEcor matter; is that</p> <p>9 correct?</p> <p>10 A. I don't think that's what I said.</p> <p>11 Q. What did you say on the subject?</p> <p>12 A. You're going to have to be more specific.</p> <p>13 Q. Sitting here today do you have a</p> <p>14 recollection of what happened to the proceeds that</p> <p>15 were paid by digEcor to HPV?</p> <p>16 A. My general recollection is that the proceeds</p> <p>17 were paid and that our contingent fees and costs were</p> <p>18 paid from them in some form or fashion. I don't know</p> <p>19 what happened to the balance, if there was any.</p> <p>20 Q. Did the proceeds or any part of them go</p> <p>21 through your trust account?</p> <p>22 A. I think I've just told you I don't know.</p> <p>23 Q. Does your firm have a policy with regard to</p> <p>24 generating a statement or document memorializing what</p> <p>25 happens to gross settlement proceeds if they do go</p>

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<p>1 through your trust account?</p> <p>2 A. Other than our retainer letter?</p> <p>3 Q. Yes.</p> <p>4 A. Describing what happens --</p> <p>5 Q. Right.</p> <p>6 A. -- or memorializing --</p> <p>7 Q. Describing the --</p> <p>8 A. -- memorializing --</p> <p>9 Q. Memorializing --</p> <p>10 A. -- memorializing after the fact what has</p> <p>11 happened.</p> <p>12 Q. Yes. The latter.</p> <p>13 A. We do generate account statements showing</p> <p>14 the receipt, use, application, and distribution of</p> <p>15 funds received in contingent fee cases to be provided</p> <p>16 to clients to account for those funds consistent with</p> <p>17 professional rules of ethics here in Washington.</p> <p>18 Q. Do you know if that was done with regard to</p> <p>19 the digEcor fees?</p> <p>20 A. That administrative task is not part of my</p> <p>21 responsibilities at the firm, so I have no independent</p> <p>22 knowledge as to whether or not that occurred.</p> <p>23 Q. Who would have been in charge at your firm</p> <p>24 of such administrative functions at the time of the</p> <p>25 digEcor settlement?</p>	<p>1 A. No.</p> <p>2 Q. Do you know if it was in 2012?</p> <p>3 A. No.</p> <p>4 Q. Do you recall the general settlement terms?</p> <p>5 A. That a license fee was paid by Epson in</p> <p>6 exchange for a fully paid, nonassessable, perpetual,</p> <p>7 worldwide license with respect to the technologies</p> <p>8 disclosed in the patent in suit.</p> <p>9 Q. Do you recall what the settlement amount --</p> <p>10 or the license fee paid by Epson actually was?</p> <p>11 A. No.</p> <p>12 Q. Do you know if any part of that licensing</p> <p>13 fee went into or through your trust account?</p> <p>14 A. I do not know.</p> <p>15 Q. Who would have knowledge about that?</p> <p>16 A. I would be speculating.</p> <p>17 Q. Who was in charge of the trust account at</p> <p>18 the time the settlement agreement was reached?</p> <p>19 A. In charge?</p> <p>20 Q. In charge.</p> <p>21 A. I don't know --</p> <p>22 Q. Supervising attorney.</p> <p>23 A. Derek Newman.</p> <p>24 Q. And who was the administrative person</p> <p>25 handling the trust account matters?</p>
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<p>1 A. Our firm administrator, Laura Kimball, would</p> <p>2 have had primary responsibility for the administrative</p> <p>3 components of that.</p> <p>4 Q. And is --</p> <p>5 A. She --</p> <p>6 Q. -- Laura spelled --</p> <p>7 A. Still talking.</p> <p>8 Q. Yes.</p> <p>9 A. And she would have been instructed to some</p> <p>10 degree by Derek Linke with respect to the application</p> <p>11 of those funds, although I do not have an independent</p> <p>12 recollection of any such instructions actually being</p> <p>13 transmitted by Derek Linke to Laura Kimball.</p> <p>14 Q. Do you know if Jennifer received any portion</p> <p>15 of the settlement proceeds from digEcor?</p> <p>16 MS. DeVET: Objection; asked and answered.</p> <p>17 A. As I've testified before, I have no</p> <p>18 independent knowledge responsive to that question.</p> <p>19 Q. (By Mr. Kimball) You indicated there was</p> <p>20 also a settlement reached with a company called Epson;</p> <p>21 is that correct?</p> <p>22 A. I did say that.</p> <p>23 Q. Do you recall when that was reached?</p> <p>24 A. No.</p> <p>25 Q. Do you know if it was in 2011?</p>	<p>1 A. Laura Kimball.</p> <p>2 Q. Is Laura still with your firm?</p> <p>3 A. She is.</p> <p>4 Q. Have you ever heard of the name Sandy</p> <p>5 Hoover?</p> <p>6 A. I have.</p> <p>7 Q. And who is Sandy Hoover?</p> <p>8 A. Elizabeth Rudkin's mother.</p> <p>9 Q. Do you know if Ms. Hoover ever loaned money</p> <p>10 to Hunts Point Ventures?</p> <p>11 A. I have been told that she did.</p> <p>12 Q. Did you participate in the negotiation or</p> <p>13 drafting of any documents relating to funds loaned by</p> <p>14 Ms. Hoover to HPV?</p> <p>15 A. I don't believe that I -- well, I can say</p> <p>16 affirmatively that I did not participate in the</p> <p>17 drafting of any documents relating to Ms. Hoover's</p> <p>18 initial loan of what I was told was \$100,000 I vaguely</p> <p>19 recall to Hunts Point as that loan preceded the</p> <p>20 retention of my law firm as counsel for either Mark</p> <p>21 Phillips or Hunts Point Ventures.</p> <p>22 Later I believe I consulted on the</p> <p>23 preparation by Michael Spain of a security agreement</p> <p>24 and Uniform Commercial Code Form 1 Financing Statement</p> <p>25 in association with the extension of further credit</p>

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<p>1 and forbearance terms by Sandy Hoover in favor of 2 Hunts Point Ventures. 3 Q. So was the initial loan amount from Sandy to 4 HPV approximately \$100,000? 5 A. I vaguely recall that Chad Rudkin, Elizabeth 6 Rudkin, and Steve -- and/or Steve Schweickert made 7 statements to me along those lines. 8 Q. Do you recall how that loan was 9 memorialized? 10 A. I do not. I don't believe I've even ever 11 seen any such document. 12 Q. So you've never seen a promissory note or 13 loan agreement relating to that initial loan? 14 A. I don't -- not that I recall. 15 Q. You did indicate a moment ago that there was 16 a subsequent agreement to somehow securitize part or 17 all of money that was owed by HPV to Ms. Hoover; is 18 that correct? 19 A. Yes. 20 Q. And I believe you indicated that that 21 included the filing of a UCC Form 1 or what is 22 commonly called a UCC 1; is that correct? 23 A. Yes. 24 Q. And you indicated, I believe, that that was 25 done in the context of a forbearance agreement?</p>	<p>1 THE WITNESS: May I have that question read 2 back, please? 3 MS. DeVET: Yeah. 4 THE REPORTER: "Question: At approximately 5 the time at which any security documents would have 6 been generated or created relating to the loan that 7 we've been discussing, and specifically with reference 8 to a forbearance agreement, was the -- 9 Strike that. 10 -- was HPV in default under any repayment 11 terms to Ms. Hoover, if you are aware? 12 A. I apologize. As asked, that question is 13 unanswerable. Can you rephrase? 14 Q. (By Mr. Kimball) Was HPV ever in default 15 with regard to any of its repayment obligations to a 16 loan to Ms. Hoover? 17 A. I don't recall what the maturity date of any 18 of -- I don't recall the maturity date of any of Hunts 19 Point Ventures' financial obligations to Ms. Hoover. 20 Q. You used the term "forbearance." 21 A. I did. 22 Q. In what context were -- or -- in what 23 context were you referring to forbearance? 24 A. I recall very generally that Ms. Hoover 25 extended the maturity date associated with her initial</p>
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<p>1 A. I believe that was done in the context of an 2 agreement that included multiple components, 3 including, but not limited to, forbearance of 4 execution on previous extension of credit and 5 extension of further credit, though at least with 6 respect to the UCC 1 statement I do not recall if my 7 firm prepared that document or if Ms. Hoover's 8 independent counsel prepared that document. 9 Q. And who was her independent counsel? 10 A. I don't know. I never met any such person, 11 but I believe I have been told that she had 12 independent counsel. I know she -- I know she's 13 pretty well lawyered. 14 Q. And who is Michael Spain? 15 A. A transactional attorney within my firm. 16 Q. At the time -- 17 MR. KIMBALL: Strike that. 18 Q. (By Mr. Kimball) At approximately the time 19 at which any security documents would have been 20 generated or created relating to the loan that we've 21 been discussing, and specifically with reference to a 22 forbearance agreement, was the -- 23 MR. KIMBALL: Strike that. 24 Q. (By Mr. Kimball) -- was HPV in default under 25 any repayment terms to Ms. Hoover, if you are aware?</p>	<p>1 loan or financial contribution to Hunts Point Ventures 2 as part of the obligation agreement creating debt that 3 was the subject of the security agreement executed by 4 and between Hunts Point Ventures and Sandy Hoover, 5 which security interest was perfected by the UCC 1 6 statement that was eventually prepared either by my 7 firm or by Ms. Hoover's counsel and I assume filed for 8 the benefit of Ms. Hoover. 9 Q. Do you know whether or not the UCC 1 was 10 ultimately filed? 11 A. I do not have an independent recollection of 12 whether or not that UCC 1 statement was ever filed. 13 Q. A few moments ago you also indicated that 14 Ms. Hoover was loaning at the time of this 15 documentation some additional money to HPV? 16 A. Which documentation? 17 Q. The security documentation. 18 A. My general recollection is that the debt 19 agreement creating the obligation that was the subject 20 of that security interest included a term providing 21 for the extension of additional financial credit. 22 Q. Do you recall what that amount was? 23 A. I do not. 24 Q. Do you know if it was \$20,000? 25 MS. DeVET: Objection; asked and answered.</p>

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<p>1 A. My recollection on that que -- on that</p> <p>2 subject is very vague, but that number does not sound</p> <p>3 entirely inconsistent with my admittedly vague</p> <p>4 recollection.</p> <p>5 Q. (By Mr. Kimball) Were you ever involved in</p> <p>6 any discussions about what the business purpose of the</p> <p>7 second loan from Ms. Hoover would relate to?</p> <p>8 A. I very, very generally recall that Hunts</p> <p>9 Point Ventures had administrative expenses other than</p> <p>10 fees to my law firm that it needed to pay using those</p> <p>11 funds.</p> <p>12 MR. KIMBALL: Could I get this marked?</p> <p>13 (Marked Deposition Exhibit No. 16.)</p> <p>14 Q. (By Mr. Kimball) Mr. Du Wors, you've been</p> <p>15 handed a document marked as Exhibit 16. I'd like you</p> <p>16 to take a look at the various pages of this document</p> <p>17 and let me know if you have ever seen any of the</p> <p>18 content therein prior to today.</p> <p>19 MS. DeVET: Can I ask a question, Counsel?</p> <p>20 On page eleven of my copy there are a number of lines</p> <p>21 that aren't copied that well. Is that -- is that true</p> <p>22 of yours as well?</p> <p>23 MR. KIMBALL: Yes.</p> <p>24 MS. DeVET: Okay.</p> <p>25 A. What's your question about Exhibit 16?</p>	<p>1 November 23rd, 2012, at 2:20 p.m. to John Du Wors with</p> <p>2 a subject line of "HPV note and security agreement."</p> <p>3 Do you see that?</p> <p>4 A. I see the content that you appear to be</p> <p>5 referring to.</p> <p>6 Q. And the printout that I have on the same</p> <p>7 page of the content of that email reads.</p> <p>8 "Hi John.</p> <p>9 A belated happy Thanksgiving to you and your family.</p> <p>10 A secured promissory note and security agreement for</p> <p>11 HPV are attached."</p> <p>12 It goes on to read,</p> <p>13 "Items I do not have for the note are payment amounts,</p> <p>14 commencement and due dates, interest and default</p> <p>15 interest rates. If you provide those by return</p> <p>16 e-mail, I am happy to" re -- "insert and resend."</p> <p>17 Do you see that content?</p> <p>18 A. I see that content.</p> <p>19 Q. Do you ever recall seeing that email or that</p> <p>20 content prior to today?</p> <p>21 A. Only vaguely and in the most general sense.</p> <p>22 Q. Do you know if in response to the content of</p> <p>23 this email that I have just read did you participate</p> <p>24 in providing any of the requested information</p> <p>25 concerning the note payment amounts, commencement and</p>
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<p>1 Q. (By Mr. Kimball) Have you ever seen the</p> <p>2 content thereof before today?</p> <p>3 A. There's a tremendous amount of content</p> <p>4 within Exhibit 15. It includes apparently a recopying</p> <p>5 of an email string over and over again, which includes</p> <p>6 apparently communications between Chad Rudkin and</p> <p>7 Sandy Hoover that I do not believe I have ever seen</p> <p>8 myself. Or at least I have no independent</p> <p>9 recollection of having seen it myself.</p> <p>10 I have a very vague recollection of the</p> <p>11 communication that's replicated multiple times between</p> <p>12 first myself and Michael Spain in which Michael Spain</p> <p>13 communicates to me that he appears to be delivering a</p> <p>14 promissory note and agreement for security with data</p> <p>15 points that are not filled in within those documents.</p> <p>16 And, similarly, I have a very vague</p> <p>17 recollection of my communication to Chad Rudkin in</p> <p>18 which I say, "FYI -- we'll get these finalized over</p> <p>19 the weekend."</p> <p>20 But I have no recollection of the other</p> <p>21 communications that appear to be included within this</p> <p>22 document, which I also am not able to authenticate.</p> <p>23 Q. On page eight of 14 of Exhibit 16, in the</p> <p>24 middle of the page there appears to be a printout of</p> <p>25 an email from Michael Spain sent Friday,</p>	<p>1 due dates, interest and default interest rates?</p> <p>2 A. I do not recall whether I had any such</p> <p>3 participation in that discussion.</p> <p>4 Q. In addition to yourself were there any</p> <p>5 attorneys working with you on that matter at that time</p> <p>6 at your office?</p> <p>7 A. I do not have an independent recollection of</p> <p>8 whether or not any other attorneys worked with me in</p> <p>9 consultation on the note and security agreement</p> <p>10 between Hunts Point Ventures and Sandy Hoover besides</p> <p>11 Michael Spain, though I'd note that Derek Linke</p> <p>12 participated with me heavily in many, if not most, of</p> <p>13 the legal matters involving Hunts Point Ventures at</p> <p>14 the firm.</p> <p>15 Q. Okay.</p> <p>16 Would you turn to the first page of</p> <p>17 Exhibit 16. There appears to be about a third of the</p> <p>18 way down on the page an email which reads, "From:</p> <p>19 Michael Spain. Sent: Friday, November 23rd, 2012</p> <p>20 2:20 p.m. To: John Du Wors. Subject: HPV note and</p> <p>21 security agreement."</p> <p>22 Do you see that text?</p> <p>23 A. I see what you're referring to.</p> <p>24 Q. And below that there is text which reads,</p> <p>25 "Hi John.</p>

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<p>1 A belated happy Thanksgiving to you and your family." 2 And then going down three more paragraphs, 3 a statement -- or a sentence which reads, 4 "The security agreement needs the exhibit we discussed 5 listing the IP. On Wednesday I searched the HPV 6 server folder for the terms 'asset,' 'purchase,' 7 'sale,' and 'agreement' to no avail." 8 Do you see that? 9 A. I see that. 10 Q. Do you recall receiving an email containing 11 that content on or about November 23rd, 2012, from 12 Michael Spain? 13 MS. DeVET: Objection; asked and answered. 14 A. I don't recall this email except in the most 15 vague and general sense, and I certainly remember 16 nothing specific with respect to the date I would have 17 received any such email. 18 Q. (By Ms. DeVet) With regard to the content of 19 the fourth paragraph, there's a reference to "...the 20 exhibit we discussed listing the IP." 21 Do you see that? 22 A. I do. 23 Q. Do you know what he was referring to? 24 A. I assume that he would have been referring 25 to one of the exhibits to the intellectual property</p>	<p>1 association with his assignment agreement with Hunts 2 Point Ventures. 3 That intellectual property was listed on two 4 schedules. As it turns out, the list of intellectual 5 property on one of the schedules was problematic in 6 the sense that it turned out Mark Phillips had no 7 legal power to transfer that intellectual property 8 because he had already assigned it to the law firm of 9 Smith & Hennessey acting as assignee for the benefit 10 of the creditors of Banana Corporation. 11 In light of that, my inference is that it 12 would have been an exhibit disclosing collateral that 13 could be properly the subject of a security agreement 14 between Hunts Point Ventures and Sandy Hoover, that 15 being the schedule of intellectual property that had 16 not been previously encumbered or clouded in title by 17 Mark Phillips' assignment of that intellectual 18 property to Smith & Hennessey. 19 Q. What was the subject matter of the 20 intellectual property that you've just referred to as 21 having been previously assigned? 22 THE WITNESS: The answer to that question is 23 long, and I'd like to use the restroom. Do you mind? 24 MR. KIMBALL: Sure. We can take a break for 25 a few minutes.</p>
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<p>1 assignment agreement executed by and between Mark 2 Phillips and Hunts Point Ventures in or about the fall 3 of 2010, though I don't know whether that would have 4 been the exhibit denominated Schedule A or Schedule B. 5 Q. You prefaced your answer with the term 6 "I assume." Are you not clear one way or the other? 7 A. As I've told you, I only have the vaguest 8 recollection of this email communication, and the same 9 is true of any oral discussion with Michael Spain 10 regarding the preparation of a note and corresponding 11 security agreement for a transaction by and between 12 Sandy Hoover and Hunts Point Ventures. 13 Because of the vagueness of my recollection 14 of any such discussion, I do not remember with 15 specificity what document I discussed, if I indeed did 16 so, with Michael Spain that would be appended as an 17 exhibit to the security agreement associated with that 18 transaction. 19 Based on my very general knowledge and 20 recollection of the affairs between Hunts Point 21 Ventures and Sandy Hoover, I infer that it must have 22 been a list of the collateral to be securitized by the 23 security agreement associated with that transaction, 24 which would have been the intellectual property Mark 25 Phillips transferred to Hunts Point Ventures in</p>	<p>1 (Recess.) 2 (Marked Deposition Exhibit No. 17.) 3 MR. KIMBALL: Back on the record. 4 Mr. Du Wors, before we took a break at your 5 request, there was a question pending, and while it is 6 abnormal to take a break with a pending question, I 7 did permit it to occur here. 8 I would like to read back into the record my 9 question at this point. Could you read the question? 10 THE REPORTER: "Question: What was the 11 subject matter of the intellectual property that 12 you've just referred to as having been previously 13 assigned?" 14 MR. KIMBALL: And can you read Mr. Du Wors' 15 response. 16 THE REPORTER: "The answer to that question 17 is long, and I'd like to use the restroom. Do you 18 mind?" 19 MR. KIMBALL: Okay. 20 Q. (By Mr. Kimball) Could I have your answer to 21 the question, please. 22 A. Sure, but I disagree with the premises of 23 your question and the argumentative nature of your 24 question as well as the arguments contained within it. 25 What actually happened was that a question</p>

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<p>1 was asked. I responded by saying, "The answer to that 2 question is long," which is a sufficient answer for 3 the purpose of causing a question no longer being 4 pending for deposition purposes.</p> <p>5 I then asked you a question, if we could 6 take a brief break -- bathroom break. You said yes. I 7 then came to your office and asked if you wanted to 8 take a short break; i.e., "I just went to the 9 restroom," and began right then or if you wanted to 10 take a longer break, in which case I would make a 11 phone call.</p> <p>12 You said -- you elected personally to take a 13 longer break. As a result, we took that break. So it 14 wasn't entirely at my request, and the length of the 15 break was dictated by you, not me.</p> <p>16 With respect to your question about the 17 intellectual property that Mark Phillips had already 18 assigned to Smith & Hennessey, that intellectual 19 property, as I vaguely recall, related to technology 20 practicing functionalities associated with digital 21 financial transactions.</p> <p>22 In an agreement between Mark Phillips and 23 MOD Systems Mr. Phillips licensed and contributed some 24 intellectual property. The intellectual property he 25 contributed to MOD Systems related to the business of</p>	<p>1 procedures set forth in the court rules dealing with 2 derivative suits; specifically, that a corporation in 3 receipt of a derivative demand could investigate that 4 demand through appointment of a committee which could 5 reach results and that those results, if reached in 6 good faith, could conclude that the derivative demand 7 was not worth pursuing by the corporation against the 8 third party against whom the derivative demand 9 requested action, which, of course, in that case was 10 Mark Phillips.</p> <p>11 Mark Phillips therefore appointed as 12 counsel for that demand review committee the law firm 13 of Smith & Hennessey, and specifically, lead counsel 14 on that matter Jim Smith, who effectively served as 15 Mark Phillips' prosecutor.</p> <p>16 Mark Phillips caused Banana Corporation, as 17 I understand it, to assume the obligation to pay 18 Mr. Smith's fees and costs, including the cost of 19 experts, such as Dennis Mandell, and Mark Phillips 20 personally guaranteed payment of those fees, as I 21 understand it, from both Phillips and Jim Smith.</p> <p>22 The bill that became owing to Smith & 23 Hennessey for fees and costs as a function of that 24 representation amounted to approximately \$200,000, 25 which neither Mr. Phillips nor Banana Corporation were</p>
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<p>1 MOD Systems; specifically, inventions used to deliver 2 media content by and through appendaged devices that 3 would go on televisions is my general recollection of 4 that.</p> <p>5 But secondary to that there were two other 6 schedules of intellectual property that were licensed 7 to MOD Systems. One kind of intellectual property, 8 which was on one of the schedules, either A or B, is 9 intellectual property that I generally refer to as 10 media technology.</p> <p>11 The other schedule of intellectual property 12 he licensed to MOD Systems related to technology that 13 I refer to generally as financial transaction 14 technology. As I understood it, Mark Phillips' other 15 company, Banana Corporation, in which Robert Arnold 16 had invested the bulk of the funds he furnished to 17 Mr. Phillips, was pursuing or purporting to pursue the 18 creation and commercial deployment of technology 19 related to mobile banking using cellphones and the 20 effectuation of financial transactions through digital 21 interfaces.</p> <p>22 When Bob Arnold sued Banana Corporation 23 derivatively, Mark Phillips got the idea that he could 24 neutralize the concerns and allegations raised by Bob 25 Arnold in that derivative suit by utilizing the</p>	<p>1 able to pay due to Phillips' own use and distribution 2 of the investment capital Mr. Arnold had contributed 3 to Banana Corporation.</p> <p>4 In partial resolution of the obligation owed 5 by Mr. Phillips and Banana Corporation to the law firm 6 of Smith & Hennessey for fees and costs, Mr. Phillips 7 purported to assign the so-called financial 8 transaction intellectual property to Smith & Hennessey 9 acting in its capacity as assignee for the benefit of 10 creditors of Banana Corporation.</p> <p>11 So when subsequently Mr. Phillips 12 fraudulently misrepresented to Hunts Point Ventures in 13 his assignment agreement to Hunts Point Ventures that 14 he had clear title to that financial transaction 15 intellectual property and could and thereby did 16 transfer it to Hunts Point Ventures in exchange for 17 the promise to furnish funds for Mr. Phillips' legal 18 representation, it turned out that Mr. Phillips' title 19 to that intellectual property was indeed clouded and 20 deficient because it was owned by Smith & Hennessey as 21 an ABC.</p> <p>22 And for that reason, because I believe we 23 had learned about that fraudulent misrepresentation by 24 Mr. Phillips as of the time Hunts Point Ventures 25 executed a security agreement with Sandy Hoover, that</p>

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<p>1 financial transaction intellectual property to which</p> <p>2 Mr. Phillips lacked title would not have been an</p> <p>3 exhibit appended to the security agreement because it</p> <p>4 did not disclose assets that could be effectively</p> <p>5 collateralized by Ms. Hoover.</p> <p>6 Q. You indicated that you learned of what you</p> <p>7 characterized as a fraudulent representation about the</p> <p>8 same time as the content of the security agreement was</p> <p>9 being negotiated and discussed; is that correct?</p> <p>10 A. No. I didn't say that.</p> <p>11 Q. When did you learn of the -- what you</p> <p>12 characterize as the fraudulent representation?</p> <p>13 A. At some point prior.</p> <p>14 Q. Prior to the date that the security</p> <p>15 agreement was executed?</p> <p>16 A. Yes.</p> <p>17 Q. A month --</p> <p>18 A. I don't --</p> <p>19 Q. -- prior?</p> <p>20 A. I don't know.</p> <p>21 Q. In your answer just given you testified</p> <p>22 about dealings between Banana Corporation and --</p> <p>23 involving Robert Arnold and Mark Phillips, including a</p> <p>24 reference to a belief that Phillips believed he could</p> <p>25 neutralize the allegations that were being made by</p>	<p>1 Mark Phillips' misconduct relating to the Banana</p> <p>2 Corporation matter were ongoing, lengthy, and involved</p> <p>3 multiple parties, including, but not limited to,</p> <p>4 prosecutors, co-defense counsel, Hunts Point Ventures</p> <p>5 representatives, Mark himself, members of my law firm,</p> <p>6 counsel for opposing parties, representatives of</p> <p>7 opposing parties, counsel for Mr. Arnold, possibly</p> <p>8 even Julia de Haan, and potentially others whom I am</p> <p>9 not remembering as I sit here today.</p> <p>10 Q. When you referred to Hunts Point Ventures</p> <p>11 representatives, who specifically were you referring</p> <p>12 to?</p> <p>13 A. I don't know that I recall much about</p> <p>14 specific conversations, but the derivative dispute</p> <p>15 involving Mark Phillips and Bob Arnold was I believe,</p> <p>16 in the most general sense, the subject of conversation</p> <p>17 with Steve Schweickert, Doug Lauer, Chad Rudkin, and</p> <p>18 Elizabeth Rudkin at least.</p> <p>19 Q. And when you referred to other members of</p> <p>20 your law firm, who specifically were you -- were you</p> <p>21 referring to?</p> <p>22 A. I wasn't referring to -- specifically to</p> <p>23 anyone.</p> <p>24 Q. Were there other attorneys you were</p> <p>25 referring to?</p>
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<p>1 Mr. Arnold. Do you recall that testimony or the</p> <p>2 subject of that testimony?</p> <p>3 A. Well, my answer speaks for itself, and I</p> <p>4 would refer you to the testimony that I actually gave</p> <p>5 in the matter, but I do recall commenting on what it</p> <p>6 appears to me, based on my understanding of the facts,</p> <p>7 Mark Phillips must have been thinking in the context</p> <p>8 of appointing a demand review committee in response to</p> <p>9 Mr. Arnold's derivative demand upon Banana</p> <p>10 Corporation.</p> <p>11 Q. When you say that, what Mark Phillips must</p> <p>12 have been thinking, are you basing that on firsthand</p> <p>13 knowledge?</p> <p>14 A. I'm basing that on extensive discussions</p> <p>15 with Mark Phillips, and to the extent that he's a</p> <p>16 party opponent in other matters, that's based on my</p> <p>17 firsthand knowledge of admissible statements from Mark</p> <p>18 Phillips, yeah.</p> <p>19 Q. Was any information in the answer you gave a</p> <p>20 few moments ago about these transactions and about</p> <p>21 this IP, was any of that obtained from discussions you</p> <p>22 had with individuals other than Mark Phillips?</p> <p>23 A. Jim Smith.</p> <p>24 Q. Anyone else?</p> <p>25 A. Numerous other people. The discussions of</p>	<p>1 A. Multiple attorneys at my firm worked on the</p> <p>2 Mark Phillips matter, both the civil matters and the</p> <p>3 criminal matters. At one time I had almost the entire</p> <p>4 litigation team working on his cases, and for that</p> <p>5 reason I generally believe I had conversations with at</p> <p>6 least Derek Linke and Derek Newman and likely Jason</p> <p>7 Sykes, Charlotte Williams and Keith Scully and perhaps</p> <p>8 others. We've had other associate attorneys come</p> <p>9 through the firm during the last four years, but I</p> <p>10 can't recall which of those did or may have worked on</p> <p>11 Mark Phillips matters.</p> <p>12 MR. KIMBALL: Exhibit 17, is that over there</p> <p>13 or --</p> <p>14 THE REPORTER: Yes.</p> <p>15 Q. (By Mr. Kimball) You have in front of you a</p> <p>16 document which has been marked as Exhibit 17. I'd</p> <p>17 like you to take a look at that document and let me</p> <p>18 know if you've ever seen it before today.</p> <p>19 A. I don't know if I've ever seen it before</p> <p>20 today.</p> <p>21 Q. Were you or your firm involved in the</p> <p>22 negotiation or drafting of the document which is</p> <p>23 marked as Exhibit 17?</p> <p>24 A. I don't know. I'm not able to authenticate</p> <p>25 Exhibit 17.</p>

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<p>1 Q. You indicated that you haven't seen it</p> <p>2 before; is that correct?</p> <p>3 A. I don't have a clear recollection of whether</p> <p>4 or not I've seen this document before. And perhaps,</p> <p>5 more specifically, I don't know that I was ever shown</p> <p>6 a signed copy of any security agreement between Hunts</p> <p>7 Point Ventures on the one hand and Sandy Hoover on the</p> <p>8 other.</p> <p>9 Q. Does Exhibit 17 concern the securitization</p> <p>10 of the loans or financial obligations of Hunts Point</p> <p>11 Ventures to Sandy Hoover insofar as you're aware?</p> <p>12 A. I --</p> <p>13 MS. DeVET: Objection to the form of the</p> <p>14 question. I think you probably need to let the</p> <p>15 witness read the whole thing if he's going to answer</p> <p>16 that.</p> <p>17 A. Yeah. I mean --</p> <p>18 Q. (By Mr. Kimball) If we want to take a few</p> <p>19 minutes to go through this, that would probably be</p> <p>20 appropriate.</p> <p>21 A. The document speaks for itself. It's</p> <p>22 missing exhibits.</p> <p>23 There was a security agreement between Hunts</p> <p>24 Point Ventures and Sandy Hoover. The content of this</p> <p>25 document, whatever it is, seems to relate to the same</p>	<p>1 interest in and to all of its assets including but not</p> <p>2 limited to the assets described on the attached</p> <p>3 Exhibit A, whether" or not "now owned or hereafter</p> <p>4 acquired by Company (collectively, the 'Collateral')." "</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. A moment ago you referred to Exhibit A as a</p> <p>8 document which did not appear to be attached to</p> <p>9 Exhibit 17. Do you recall that testimony?</p> <p>10 A. I do.</p> <p>11 Q. And is the Exhibit A that I have just</p> <p>12 referred to in paragraph three on page one the same</p> <p>13 Exhibit A you were referring to in the answer to my</p> <p>14 earlier question?</p> <p>15 A. Naturally, I have no idea.</p> <p>16 Q. Did you participate in drafting or</p> <p>17 negotiating the terms of a document which would be</p> <p>18 characterized appropriately or described as that</p> <p>19 referred to in paragraph three as Exhibit A?</p> <p>20 THE WITNESS: Could I have that question</p> <p>21 read back?</p> <p>22 THE REPORTER: "Question: Did you</p> <p>23 participate in drafting or negotiating the terms of a</p> <p>24 document which would be characterized appropriately or</p> <p>25 described as that referred to in paragraph three as</p>
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<p>1 subject matter. Based on my inability to authenticate</p> <p>2 it, because I don't know that I've ever seen it</p> <p>3 before, I can't tell you if it was indeed that</p> <p>4 document relating to that specific transaction, but it</p> <p>5 certainly bears language that on its face appears to</p> <p>6 relate generally to the subject of such a transaction.</p> <p>7 Q. What exhibits or other documents do you</p> <p>8 believe were attached to or which you testified were</p> <p>9 omitted from Exhibit 17?</p> <p>10 A. Having no independent knowledge of the</p> <p>11 provenance of this document and no au -- no ability to</p> <p>12 authenticate, I, of course, cannot be sure. I see a</p> <p>13 mention of an Exhibit A within the "Grant of Security</p> <p>14 Interest" paragraph numbered three on the first page</p> <p>15 of the document, and in reviewing the document itself</p> <p>16 I see no Exhibit A, which could lead one to infer that</p> <p>17 it's missing an Exhibit A, at minimum. But, again,</p> <p>18 having no ability to say if I've seen this document</p> <p>19 before, I couldn't tell you what's missing from it.</p> <p>20 Maybe it never had an Exhibit A.</p> <p>21 Q. Looking at page one of Exhibit 17, paragraph</p> <p>22 three, a paragraph titled "Grant of Security</p> <p>23 Interest," there's a sentence which reads, "Company</p> <p>24 hereby pledges, assigns and grants to Secured Party a</p> <p>25 security interest in all of its right, title and</p>	<p>1 Exhibit A?"</p> <p>2 A. Well, of course, based on lack of personal</p> <p>3 knowledge, I can't tell you what paragraph three truly</p> <p>4 refers to.</p> <p>5 Secondly, could properly be characterized,</p> <p>6 as you phrased that question, calls for me to</p> <p>7 speculate or express an opinion that I, frankly, don't</p> <p>8 have.</p> <p>9 And then, third, to the extent that you're</p> <p>10 talking about the schedule of intellectual property</p> <p>11 that I believe was appended to the security agreement</p> <p>12 that my law firm did participate in the preparation of</p> <p>13 in relation to the transaction for the securitization</p> <p>14 of intellectual property between Hunts Point Ventures</p> <p>15 and Sandy Hoover, that schedule was a list of</p> <p>16 intellectual property that, no, I did not participate</p> <p>17 in the preparation or drafting of.</p> <p>18 Q. (By Mr. Kimball) Did anyone at your law firm</p> <p>19 participate in the preparation, negotiation or</p> <p>20 drafting of such a schedule?</p> <p>21 MS. DeVET: Objection to the form of the</p> <p>22 question.</p> <p>23 Q. (By Mr. Kimball) You can answer.</p> <p>24 A. Thanks for telling me the court rules.</p> <p>25 I don't have independent personal knowledge</p>

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<p>1 of whether or not that occurred. The schedules of 2 intellectual property that were the subject of both 3 the assignment agreement Mark Phillips executed with 4 Hunts Point Ventures and also the security agreement 5 executed between Hunts Point Ventures and Sandy Hoover 6 was taken from the license and contribution agreement 7 Mark Phillips entered into with MOD Systems. 8 Whether that document was simply copied 9 wholesale by means of a xerographic device and 10 appended to the various agreements my firm 11 participated in preparation of or whether someone like 12 Derek Linke scanned it, copied its content, and 13 reformatted it to cause it to appear more organized or 14 legible, I don't know. 15 Q. Paragraph number one on page one of 16 Exhibit 17 refers to a "...promissory note of even 17 date herewith ('Promissory Note') to Secured Party..." 18 Do you see that reference? 19 A. I see the language you're referring to. 20 Q. Do you have any reason to believe that 21 Exhibit 17 in its final form was or was not executed 22 on November 19th, 2012? 23 A. I have no personal knowledge responsive to 24 that question. 25 Q. Have you ever seen a copy of a secured --</p>	<p>1 "What is commercially acceptable to you?" 2 And I suspect that Sandy would have come 3 forth with reasonable terms, and those would have been 4 relayed to us for the purpose of our preparation 5 efforts. 6 Q. You used the term "gracious" a moment ago in 7 referring to Sandy Hoover and her relationship as a 8 lender to Hunts Point Ventures. On what information 9 are you basing your invocation of the term "gracious"? 10 A. Conversations with Steve Schweickert, Chad 11 Rudkin, Elizabeth Rudkin, and Sandy Hoover. 12 Q. And specifically what conversations did you 13 have with Steve Schweickert that would lend support to 14 your characterization of that relationship as 15 gracious? 16 A. I don't have a specific recollection of the 17 precise verbiage or text of any conversation between 18 myself and Steve Schweickert on the subject other than 19 that I recall substantively very general comments from 20 Steve Schweickert indicating his view that she would 21 not be an aggressive, hard-nosed creditor but, rather, 22 one that would be reasonable and supportive of Hunts 23 Point Ventures' efforts to recapitalize and fund its 24 activities so as to meet its obligations to all of its 25 creditors.</p>
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<p>1 excuse me -- a promissory note dated November 19th, 2 2012, in favor of Sandy Hoover and executed by Hunts 3 Point Ventures? 4 A. I don't recall. I've certainly seen a draft 5 form of a promissory note between those two parties. 6 I don't recall its date, whether I saw a final draft 7 or whether I saw a signed copy ever. 8 Q. Did you participate in drafting that note? 9 A. No. 10 Q. Did you participate in negotiating the terms 11 of that note? 12 A. No. 13 Q. Do you know if anyone at your firm 14 participated in negotiating the terms of that note? 15 A. I don't think that anybody from my firm 16 negotiated those terms as such. The terms would have 17 been negotiated between Chad Rudkin and Sandy Hoover. 18 To the extent that my firm participated in 19 the drafting, it would have been something that 20 occurred based on the terms that were relayed to us 21 probably by Chad Rudkin. 22 But Sandy Hoover was a gracious and friendly 23 creditor to Hunts Point Ventures, so I doubt that 24 there would have been any hard negotiation. I suspect 25 that Chad Rudkin would have said to Sandy Hoover,</p>	<p>1 MR. KIMBALL: Can I get that marked? 2 (Marked Deposition Exhibit No. 18.) 3 Q. (By Mr. Kimball) Mr. Du Wors, you've been 4 handed a document marked as Exhibit 18. Have you ever 5 seen a copy of this document before? 6 A. I don't have an independent recollection of 7 having seen this particular document. 8 Q. There was a reference in Exhibit 17 to a 9 promissory note dated on or about November 19th of 10 2012, and I believe you indicated you did not 11 recall -- or you were unaware of what date, if any, 12 an agreement was signed -- excuse me -- a secured 13 promissory note was signed as referenced in 14 Exhibit 17. Is that fair? 15 A. Correct. 16 Q. Okay. 17 Turning to Exhibit 18, there is a reference 18 to January 14th, 2013, at -- near the top of the first 19 page of Exhibit 18. Do you see that? 20 A. I do. 21 Q. Do you have any reason to believe that the 22 original of the secured promissory note marked as 23 Exhibit 18 was signed on any date other than 24 January 14th, 2013? 25 A. I have no basis of personal knowledge</p>

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<p>1 sufficient to authenticate Exhibit 18 or say that 2 indeed it was a promissory note executed between Hunts 3 Point Ventures and Sandy Hoover. Nor do I have 4 personal knowledge sufficient to say when either 5 Exhibit 18 was executed by and between Hunts Point 6 Ventures and Sandy Hoover or whether or not any 7 promissory note was indeed ever executed by and 8 between Hunts Point Ventures and Sandy Hoover, except 9 to say that I have the most general recollection that 10 I was told that they were going to execute such a 11 document, and if anyone did tell me that such a 12 document was, in fact, executed by the parties, I 13 would probably have to have my recollection refreshed 14 in order to have any real memory of whether or not it 15 occurred.</p> <p>16 Q. Do you know if there were any promissory 17 notes between Sandy Hoover and Hunts Point Ventures 18 involving the sum of \$20,000 that were executed other 19 than on or about January 14th, 2013?</p> <p>20 A. Well, I don't know that there was one 21 executed on January 14th, 20,000 -- 2013, so I 22 couldn't tell you that.</p> <p>23 I can tell you that I recall that our firm 24 participated in preparation of a promissory note that 25 provided for the extension of further credit by Sandy</p>	<p>1 consistent with my vague recollection of the amount of 2 further credit, at minimum, Sandy Hoover was going to 3 extend in association with the promissory note and 4 security agreement executed between Sandy Hoover and 5 Hunts Point Ventures.</p> <p>6 I also have a vague recollection that 7 \$20,000 or some amount in this ballpark was simply an 8 initial further extension of credit.</p> <p>9 You see, promissory notes and security 10 agreements are in their nature inflatable, and I seem 11 to recall some discussion of further credit being 12 extended by Sandy Hoover beyond the initial amounts 13 that became the subject of the promissory note and 14 security agreement she was to execute with Hunts Point 15 Ventures, especially as those further funds might be 16 necessary for purposes of litigation that would be 17 initiated against Hunts Point Ventures by such parties 18 as Joyce Schweickert.</p> <p>19 Q. Do you recall the amounts of such potential 20 additional loans?</p> <p>21 A. No.</p> <p>22 Q. Do you recall the dates?</p> <p>23 A. No.</p> <p>24 Q. Which --</p> <p>25 MR. KIMBALL: Strike that.</p>
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<p>1 Hoover in addition to her initial loan to Hunts Point 2 Ventures. I don't recall anyone telling me it was 3 actually executed.</p> <p>4 I believe that we delivered, at minimum, 5 draft copies to Chad Rudkin and that whatever happened 6 with the documents from there took place between Chad 7 Rudkin and Sandy Hoover. I don't recall Mr. Rudkin 8 ever having transmitted to my law firm or me 9 specifically executed copies of any such document, 10 though it may have occurred, and perhaps my 11 recollection would be refreshed if I saw an email 12 containing such transmission.</p> <p>13 \$20,000 is a number that sounds vaguely 14 right in terms of the further extension of credit by 15 Sandy Hoover in association with the execution of that 16 promissory note and corresponding security agreement, 17 but I don't have a specific independent recollection 18 of how much further credit she actually extended.</p> <p>19 Q. Sitting here today, then, you do not recall 20 if Sandy Hoover loaned any amount in excess of the 21 initial \$100,000 and the \$20,000 that you've been 22 describing?</p> <p>23 A. I didn't describe \$20,000. You described 24 \$20,000, and you referred to it in the language of 25 Exhibit 18. I said to you that that sounds fairly</p>	<p>1 Q. (By Mr. Kimball) What attorneys at your firm 2 participated in drafting the security -- or -- excuse 3 me -- the secured promissory note between Ms. Hoover 4 and HPV that you alluded to a moment ago?</p> <p>5 A. I don't know if it was a secured promissory 6 note. I believe it was, at minimum, a promissory 7 note. It may have made reference to a security 8 agreement.</p> <p>9 Promissory notes are often referred to as 10 secured, but they are not in -- secured in the sense 11 that they memorialize an obligation whose repayment is 12 secured by the encumbrance of collateral. Rather, the 13 only inherent security offered by a promissory note is 14 that it is negotiable in nature and that, upon such 15 negotiation, becomes free of certain substantive 16 defenses to a contractual obligation.</p> <p>17 That said, the note and security agreement 18 documents that my firm participated in the preparation 19 of for Hunts Point Ventures' dealings with Sandy 20 Hoover were created at least in part by Michael Spain, 21 may have been consulted on and/or edited by me, though 22 I don't have a specific recollection as to whether or 23 not I actually edited any such document, and may have 24 been consulted on or edited by Derek Linke, who 25 assisted me in many, if not most, of the tasks</p>

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<p>1 relating to my law firm's representation of Hunts 2 Point Ventures. 3 Q. Did you ever have any discussion with Chad 4 Rudkins concerning subordination or prioritization of 5 HPV's financial obligations to Schweickert and that to 6 Sandy Hoover? 7 A. What Schweickert? 8 Q. Jennifer Schweickert. 9 A. Subordination? 10 Q. Or prioritization of the two loans. Of the 11 loans. 12 A. I think I need to consult with my counsel, 13 because I think that the answer to that question may 14 be privileged, so I'll object on the basis of 15 privilege, and so does my counsel, and we can meet and 16 confer on the instruction not to answer if you like. 17 Q. So I'm clear on this, the privilege is being 18 invoked because it involves discussions between you 19 and your counsel in this case? 20 A. No. I was counsel for Hunts Point Ventures, 21 and at the time that the note and security agreement 22 were negotiated by Hunts Point Ventures with Sandy 23 Hoover Chad Rudkin was the chief executive officer of 24 Hunts Point Ventures. Hunts Point Ventures owns that 25 privilege.</p>	<p>1 (Discussion off the record.) 2 MR. KIMBALL: Back on the record? 3 MS. DeVET: Uh-huh. 4 THE WITNESS: Okay. 5 MS. DeVET: The question pending is a 6 question that implicates the attorney-client privilege 7 between Hunts Point Ventures and my client and my 8 client's law firm. And because we don't know of any 9 express waiver of the -- of the privilege or any 10 action that would apply to the privilege as a matter 11 of law, I'm going to instruct my client not to answer 12 questions that would violate the attorney-client 13 privilege in that -- in this matter. 14 MR. KIMBALL: And I would ask counsel, do 15 you agree with your client's characterization that the 16 receiver would be entitled to waive the privilege with 17 regard to the question that I asked? 18 THE WITNESS: I don't know that you're 19 prepared to take a legal position on that yet. Are 20 you? 21 MS. DeVET: That is exactly what I was about 22 to say. 23 THE WITNESS: Yeah. 24 MS. DeVET: I'd rather not make a statement 25 on that right now. I would like to look into it</p>
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<p>1 Now the privilege is owned by the receiver. 2 So advice I would have given to Hunts Point Ventures 3 as to the effect of the execution of the loan 4 agreement, promissory note, and corresponding security 5 agreement with Sandy Hoover would be legal advice I 6 was giving to Hunts Point Ventures that would be the 7 subject of the privilege. 8 As I sit here, I don't know whether or not 9 the receiver has elected to waive any such privilege, 10 and I would certainly have to speak to my counsel to 11 see if she knows anything more about that. 12 If Hunts Point Ventures, by and through the 13 receiver, has not waived privilege with respect to my 14 legal advice to Hunts Point Ventures during that 15 period, specifically to its Upjohn Control Group, then 16 I would not have the ability to answer that question. 17 MR. KIMBALL: Ms. Du Vet, would you like to 18 take a break to discuss with your client whether or 19 not the privilege has been waived based on your 20 understanding? 21 MS. DeVET: Yeah, unless you want to move on 22 and just ask your questions. 23 THE WITNESS: Let's talk for a sec, if 24 that's all right. 25 MS. DeVET: All right. That's fine.</p>	<p>1 before I said one way or the other. 2 MR. KIMBALL: Fair enough. 3 Q. (By Mr. Kimball) Mr. Du Wors, do you recall 4 having any conversation either with Sandy Hoover or 5 her attorney about whether her loans would be given 6 preference to those made by Jennifer Schweickert? 7 A. I do not have a specific recollection of a 8 conversation relating to the relative priority between 9 Ms. Hoover's loan obligations and Jennifer 10 Schweickert's. I believe that I had conversations 11 with Ms. Hoover relating generally to the effect of a 12 perfected security agreement as to the intellectual 13 property and other assets of Hunts Point Ventures for 14 the purpose of supporting Hunts Point Ventures' 15 negotiations with Ms. Hoover to induce her to extend 16 further credit. 17 At the time those conversations were taking 18 place I'm not sure that we had strong expectations 19 that Jennifer Schweickert would assert a claim that 20 would be impacted by Ms. Hoover's anticipated security 21 agreement with Hunts Point Ventures. Rather, the only 22 threatening party I recall at that time was Joyce 23 Schweickert. 24 If I recall correctly, Chad Rudkin was in 25 regular conversations with Jennifer Schweickert that,</p>

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<p style="text-align: right;">Page 158</p> <p>1 as I recall, were amicable in nature and led me to 2 believe in my own mind that whatever dealings were 3 taking place between Chad Rudkin and Jennifer 4 Schweickert -- or, rather, Chad Rudkin in his 5 capacity as CEO of Hunts Point Ventures and Jennifer 6 Schweickert would be workable for purposes of Hunts 7 Point Ventures meeting its debt obligations, whatever 8 those were. 9 Q. What did Joyce Schweickert do or say that 10 you regarded as threatening, as just indicated in your 11 answer? 12 A. My general recollection from that time 13 period was that Joyce Schweickert had communicated 14 some kind of claim to Hunts Point Ventures by and 15 through her attorney, Jeff Keane, and that much of my 16 knowledge relating to those claimed assertions came 17 from dealings with Keane over third-party discovery 18 requests he had propounded to Hunts Point Ventures in 19 association with the litigation that transpired 20 between Joyce Schweickert and Steve Schweickert over 21 Steve Schweickert's claims of estate dissolution, 22 whatever the nature of those proceedings were. I 23 don't know if it was an attempt at dissolution of a 24 meretricious relationship -- although I believe 25 that's not the case because, if I understand correctly</p>	<p style="text-align: right;">Page 160</p> <p>1 Schweickert was the sole shareholder of Hunts Point 2 Ventures? 3 A. According to my understanding, there was an 4 extensive period of time in which Mr. Schweickert was 5 the sole shareholder of Hunts Point Ventures. 6 (Discussion off the record.) 7 (Marked Deposition Exhibit No. 19.) 8 Q. (By Mr. Kimball) Mr. Du Wors, you've been 9 handed a document marked as Exhibit 19. Have you ever 10 seen this document before? 11 A. I believe so. 12 Q. Do you know what law firm drafted this 13 document? 14 A. If it is the stock redemption and 15 indemnification agreement that was indeed entered into 16 in -- by Joyce Schweickert on the one hand and Hunts 17 Point Ventures by and through Steve Schweickert on the 18 other hand that my law firm prepared in December of 19 2010 or January of 2011, then this would have been 20 prepared by Michael Spain, but because I didn't 21 prepare this document and I am not able to compare it 22 to the original of that document we have at my law 23 firm, I can't confirm that this is indeed that 24 document or authentic. 25 Q. Generally, Exhibit 9 appears to be a</p>
<p style="text-align: right;">Page 159</p> <p>1 from certain divorce counsel, that kind of 2 relationship has been abolished by statute in 3 Washington. 4 I simply know that Steve Schweickert brought 5 litigation claims against Joyce Schweickert seeking 6 money on some theory that looked a bit like a 7 meretricious relationship, and Jeff Keane 8 carpet-bombed Hunts Point Ventures with expansive and 9 unreasonable third-party discovery requests that I 10 moved to quash and apparently in my motion papers were 11 a success enough that Keane relented in his 12 unreasonable discovery demands. 13 Q. You indicated a moment ago that there were 14 discussions with Sandy Hoover concerning these loans 15 or the loan that was in process. Were your 16 conversations with Ms. Hoover directly or through 17 counsel? 18 A. I had one or two conversations directly with 19 Ms. Hoover. I have never met or spoke to her counsel 20 or learned of the identity of any specific counsel 21 except to know that she, generally speaking, had 22 lawyers that she did and could consult by virtue of 23 her past history as an entrepreneur and business owner 24 and, frankly, wealthy investor. 25 Q. Was there a period of time in which Steve</p>	<p style="text-align: right;">Page 161</p> <p>1 redemption agreement by which the stock owned by Joyce 2 Schweickert was being redeemed by Hunts Point 3 Ventures; is that correct? 4 MS. DeVET: Counsel, do you mean -- 5 A. No. That's -- 6 MS. DeVET: -- 19? 7 A. -- not correct. 8 Q. (By Mr. Kimball) 19? Didn't I say 19? 9 A. No. 10 Q. All right. 11 Can you tell me the purpose of Exhibit 19? 12 A. No. I'm not able to authenticate it. The 13 document speaks for itself. And I can't tell you that 14 this is definitely the stock redemption agreement that 15 was executed between Joyce Schweickert and Steve 16 Schweickert on behalf of Hunts Point Ventures in 17 January of 2011 or December of 2010 at the time that 18 my law firm prepared such document for them. Or, 19 rather, for Hunts Point Ventures. 20 The document that you have put in front of 21 me as Exhibit 19 is entitled "STOCK REDEMPTION AND 22 INDEMNIFICATION AGREEMENT." 23 (Marked Deposition Exhibit No. 20.) 24 Q. (By Mr. Kimball) There is -- 25 MR. KIMBALL: Strike that.</p>

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<p>1 Q. (By Mr. Kimball) You've been handed a</p> <p>2 document marked as Exhibit 20. Have you ever seen</p> <p>3 this document before?</p> <p>4 A. I don't know. I don't prepare the invoices</p> <p>5 at my firm.</p> <p>6 Q. Do you ever review them?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know if you reviewed this one?</p> <p>9 A. I don't have an independent recollection of</p> <p>10 whether I reviewed this one. Hunts Point Ventures was</p> <p>11 a client of mine listed under my name as the</p> <p>12 originating attorney, and the general practice at the</p> <p>13 firm is to circulate at the end of each month -- or,</p> <p>14 rather, at the beginning of each month a list of the</p> <p>15 pre-bills for the month preceding that had just come</p> <p>16 to an end before the beginning of the month,</p> <p>17 pre-billing activities.</p> <p>18 I review the pre-bills and give my notes and</p> <p>19 edits back to Laura Kimball so she can finalize final</p> <p>20 invoices, which are not presented to me before they're</p> <p>21 distributed to clients for payment.</p> <p>22 Q. Do you know what client billing program was</p> <p>23 used in 2011 by your law firm?</p> <p>24 A. PC Law.</p> <p>25 Q. I'd like you to turn to page two of</p>	<p>1 drunk driving and perhaps domestic violence. Or</p> <p>2 assault. I guess it would have been assault rather</p> <p>3 than domestic violence.</p> <p>4 Q. And referring to those events, does that in</p> <p>5 any way permit you to identify a month or a month and</p> <p>6 a year in which that event occurred?</p> <p>7 A. No, because I don't remember when any of</p> <p>8 those things occurred. At some point following the</p> <p>9 conclusion of Mark Phillips' criminal trial Steve</p> <p>10 Schweickert became involved in a romantic dispute with</p> <p>11 his domestic partner, Joyce Schweickert, that led to</p> <p>12 their breakup.</p> <p>13 And in the wake of that dispute, perhaps in</p> <p>14 the month or two following the breakup, Steve</p> <p>15 Schweickert and Joyce Schweickert apparently had some</p> <p>16 sort of an interaction in a restaurant parking lot</p> <p>17 that gave rise to a criminal prosecution for drunk</p> <p>18 driving, on which Steve -- Pete Mair represented Steve</p> <p>19 Schweickert.</p> <p>20 And sometime in the near period subsequent</p> <p>21 to that event, that interaction with Joyce</p> <p>22 Schweickert, Steve Schweickert transferred to Chad</p> <p>23 Rudkin 50 percent -- Chad Rudkin and Elizabeth Rudkin</p> <p>24 jointly 50 percent ownership in Hunts Point Ventures,</p> <p>25 Inc., and reconstituted the board and officer makeup</p>
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<p>1 Exhibit 20. There is an entry dated February 8th,</p> <p>2 2011. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And it reads, "Draft Stock Redemption and</p> <p>5 Indemnity Agreement, Resignations of Joyce</p> <p>6 Schweickert, and Board Resolution to Accept</p> <p>7 resignations & Redeem Shares, meeting with client."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And off to the far right of that entry are</p> <p>11 the letters MS. Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Do you know what that refers to?</p> <p>14 A. On our invoices the letters MS refer to</p> <p>15 Michael Spain. Because I'm unable to authenticate</p> <p>16 this document, I couldn't tell you that for sure, but</p> <p>17 assuming it's an invoice from my law firm, that would</p> <p>18 refer to Michael Spain.</p> <p>19 Q. Do you have a recollection sitting here</p> <p>20 today of when Chad Rudkin became a shareholder in</p> <p>21 Hunts Point Ventures?</p> <p>22 A. Not by date but, rather, by event.</p> <p>23 Q. And by "event," what event are you referring</p> <p>24 to?</p> <p>25 A. Steve Schweickert's criminal prosecution for</p>	<p>1 of Hunts Point Ventures, Inc., to appoint, among other</p> <p>2 things, Chad Rudkin as chief executive officer.</p> <p>3 Q. Do you recall the documents that were</p> <p>4 prepared or used to accomplish the purposes that</p> <p>5 you've just described?</p> <p>6 A. I recall at least some of them. I prepared</p> <p>7 the shareholder resolution appointing Chad Rudkin as</p> <p>8 CEO. I believe that resolution also -- well -- strike</p> <p>9 that.</p> <p>10 The shareholder resolution would have</p> <p>11 appointed the board, and I believe I also prepared a</p> <p>12 corresponding board resolution appointing officers.</p> <p>13 And I believe the completion of the board consisted</p> <p>14 of Steve Schweickert, Elizabeth Rudkin, and Chad</p> <p>15 Rudkin, with Chad Rudkin as chairperson of the board.</p> <p>16 And I believe in the document I drafted and</p> <p>17 the board executed that the board then appointed as</p> <p>18 officers Chad Rudkin in the position of CEO, Elizabeth</p> <p>19 Rudkin in the position of secretary and possibly</p> <p>20 treasurer, and that Steve Schweickert may have been</p> <p>21 appointed as an officer of some kind somewhere within</p> <p>22 the C suite, but I don't remember for sure whether</p> <p>23 that occurred and/or what position that would have</p> <p>24 been. I have some semblance of a recollection that</p> <p>25 Mr. Steve Schweickert may have been appointed to -- as</p>

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<p style="text-align: right;">Page 166</p> <p>1 chief operating officer.</p> <p>2 MR. KIMBALL: Can I get this marked?</p> <p>3 (Marked Deposition Exhibit No. 21.)</p> <p>4 Q. (By Mr. Kimball) Mr. Du Wors, you just</p> <p>5 described a document, and a document marked as</p> <p>6 Exhibit 21 has just been handed to you. I'd like you</p> <p>7 to take a minute to look at Exhibit 21 and let me know</p> <p>8 if that is either the document or one of the documents</p> <p>9 you were referring to a moment ago.</p> <p>10 A. What's your question about this document?</p> <p>11 Q. Is this the document that you were referring</p> <p>12 to a moment ago in which you identified that there was</p> <p>13 a document between the shareholders confirming certain</p> <p>14 events and the appointment of certain individuals as</p> <p>15 certain officers?</p> <p>16 A. I can't say for sure because I can't -- am</p> <p>17 not able to compare it to the documents I have back in</p> <p>18 my holdings at the law firm, which would be necessary</p> <p>19 to authenticate it with any certainty, but it does</p> <p>20 look very much like the documents that I prepared,</p> <p>21 although perhaps it should be noted that I apparently,</p> <p>22 if this is that document, misdated the signature lines</p> <p>23 on page four of the document such that they read as</p> <p>24 May 2011 signatures as opposed to 2012.</p> <p>25 Q. And I was going to ask you next about that</p>	<p style="text-align: right;">Page 168</p> <p>1 time in 2011, and I can say that with relative</p> <p>2 certainty.</p> <p>3 I, however, have some trouble authenticating</p> <p>4 this particular document or saying when this</p> <p>5 particular document was executed partly because I</p> <p>6 can't compare it to my holdings -- my document</p> <p>7 holdings back at the firm and partly because the</p> <p>8 footer in the lower left-hand corner of each page of</p> <p>9 this document suggests to me that someone else other</p> <p>10 than me participated in the preparation of this</p> <p>11 document, because I do not format footers for</p> <p>12 corporate governance documents in that fashion. I do</p> <p>13 not include a numerical designation of the year</p> <p>14 followed by the month followed by the specific day.</p> <p>15 And so, therefore, while this may have been</p> <p>16 a document that I prepared -- that is to say, 21 may</p> <p>17 have been a version of a document that I prepared, if</p> <p>18 this is indeed the final version of that document that</p> <p>19 I was describing earlier, which I can't totally</p> <p>20 confirm, the footer formatting causes me to believe</p> <p>21 that someone such as Michael Spain may have taken it</p> <p>22 over to finalize it.</p> <p>23 Q. I'd like you to look at the middle of page</p> <p>24 one of Exhibit 21, paragraph D. --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 167</p> <p>1 very issue.</p> <p>2 So the document on the first page of</p> <p>3 Exhibit 21 says that it is made and entered into</p> <p>4 effective 29th day of May 2012. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And then if you look at the footer on each</p> <p>7 page, there's a document -- or there's a reference on</p> <p>8 the left-hand side which says, "20120529 HPV Joint</p> <p>9 Consent."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. And then finally, on the last page of</p> <p>13 Exhibit 21 there's a reference to, "It is so resolved</p> <p>14 this 29th day of May 2012."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. So is it your belief that this document was,</p> <p>18 in fact, executed sometime at the end of May of 2012</p> <p>19 rather than 2011?</p> <p>20 A. The document I described that I prepared for</p> <p>21 purposes of appointing Steve Schweickert and Chad</p> <p>22 Rudkin as directors and all three of -- Steve</p> <p>23 Schweickert, Chad Rudkin, and Elizabeth Rudkin as</p> <p>24 officers would have been created in a date much closer</p> <p>25 to May of 2012 and certainly was not created at any</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. -- which reads, "To the extent that the</p> <p>2 transfer of shares to Chad Rudkin was not legally</p> <p>3 effectuated as of January 1st, 2011, the Shareholders</p> <p>4 now unanimously make and ratify that issuance of</p> <p>5 shares to Rudkin."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you know what the reference to that the</p> <p>9 transfer of shares to Chad Rudkin was not legally</p> <p>10 effectuated might be referring to?</p> <p>11 A. Yes.</p> <p>12 Q. And what was that?</p> <p>13 A. My testimony in response to that quest --</p> <p>14 question is based partly on privileged information and</p> <p>15 partly on non-privileged information, so I'll share</p> <p>16 with you the privileged -- I'm sorry -- the</p> <p>17 non-privileged information.</p> <p>18 The non-privileged information is that Steve</p> <p>19 Schweickert had made statements in front of me and</p> <p>20 Chad Rudkin before Chad Rudkin was a member of the</p> <p>21 Upjohn Control Group at Hunts Point Ventures to the</p> <p>22 effect that he had always promised Chad Rudkin that</p> <p>23 Chad would be a part owner in Hunts Point Ventures.</p> <p>24 And actually, I'm not sure about always, but for some</p> <p>25 significant period of time.</p>

20 (Pages 166 to 169)

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John Du Wors

August 25, 2014

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<p>1 I was not aware at the time that I drafted 2 the document I drafted for them that any formal 3 legally effective transfer of shares had ever 4 transpired between Steve Schweickert and Chad Rudkin 5 for the purpose of causing Mr. Rudkin to be a part, 6 let alone half, owner in Hunts Point Ventures, and I 7 do not know whether or not such an assignment may be 8 pray -- may be made nunc pro tunc or after the fact. 9 And for that reason I do recall that I 10 included language in the document I prepared for them 11 effectuating the transfer of shares and reciting an 12 effective date of January 1st, 2011, but I do not know 13 from a legal point of view, as I'm not principally a 14 corporate governance attorney, whether or not that 15 recitation effectively creates an ownership interest 16 on the part of Chad Rudkin that's effective as of 17 January 1st, 2011. 18 Q. You indicated that your answer included 19 reference to information which was not privileged and 20 partly which would be privileged. When you referred 21 to that part which would be privileged, who is the 22 client to which the privilege belonged or belongs? 23 A. Hunts Point Ventures. 24 (Marked Deposition Exhibit No. 22.) 25 Q. (By Mr. Kimball) Mr. Du Wors, you've been</p>	<p>1 Exhibit 22 is indeed the document that I prepared and 2 that was executed between the parties, which I assume 3 it was, based on the content and appearance. 4 MR. KIMBALL: Let's take a break for a 5 couple of minutes. I don't have a whole lot more to 6 go. 7 MS. DeVET: All right. 8 (Recess.) 9 MR. KIMBALL: Okay. Back on the record? 10 Q. (By Mr. Kimball) Mr. Du Wors, do you recall 11 approximately the last date that your firm did work 12 for Mark Phillips was? 13 A. May or June of 2011. 14 Q. As of May of 2011 was your firm pursuing 15 patent violation claims or complaints on behalf of 16 HPV? 17 A. I don't think so. 18 Q. Do you recall if you ever had any oral 19 conversations with the Rudkins regarding Mark 20 Phillips' release from prison? 21 A. No non-privileged conversations. 22 Q. And the client invoking the privilege would 23 be who or what? 24 A. Hunts Point Ventures. 25 Q. Did you ever have any conversations with the</p>
Page 171	Page 173
<p>1 handed a document marked as Exhibit 22. Do you recall 2 if you've seen this document before? 3 A. I recall that such a document was prepared. 4 I can't compare this to the document holdings back at 5 my office, so I can't confirm its authenticity. I 6 also don't know if I wrote this up. 7 I mean, assuming it is authentic, and that's 8 an assumption for the purpose of my answer, I don't 9 remember if I wrote this or if Michael Spain wrote it. 10 I think I did. And the signature line next to 11 paragraph three -- the initials, that is -- are mine. 12 And the written text -- the handwritten text above the 13 interlineation through the word "seller" in paragraph 14 three with the handwritten word "purchaser" above it, 15 that text -- that handwritten text is my penmanship, 16 I'm embarrassed to say. 17 Q. What was the purpose of the creation of 18 Exhibit 22? 19 A. Chad and Elizabeth bought Steve Schweickert 20 out in the latter part of 2012 so that they would 21 become sole shareholders in Hunts Point Ventures. 22 Q. And was the purpose of this document to 23 memorialize that transaction? 24 A. The purpose of this document was to 25 effect -- effectuate that transaction, if this</p>	<p>1 Rudkins regarding Mark Phillips' ownership interest in 2 HPV? 3 A. How is this reasonably calculated to lead to 4 the discovery of admissible evidence in the Jennifer 5 Schweickert case? 6 Q. I do not have to put that on the record. 7 A. Well, then I won't answer. 8 Q. So you're refusing to answer, and the reason 9 you're refusing to answer is that it is -- will not 10 lead to discoverable evidence in this case? 11 A. I'm refusing on two bases. One, that it's 12 not reasonably calculated to lead to the discovery of 13 admissible evidence in the Jennifer Schweickert case; 14 and, two, that the only conversations that I would 15 have had on that subject would be privileged. 16 Q. And who would the client be? 17 A. Hunts Point Ventures. 18 Q. Was there ever a meeting at your office 19 involving the Rudkins and Mark Phillips concerning 20 Phillips' ownership or putative ownership in HPV? 21 A. There was a meeting at my office between 22 Chad Rudkin and Mark Phillips concerning his 23 non-ownership interest in Hunts Point Ventures. 24 Q. Do you recall approximately when that 25 occurred?</p>

21 (Pages 170 to 173)

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John Du Wors

August 25, 2014

Page 174	Page 176
<p>1 A. Shortly after Mr. Phillips was released from 2 federal prison. 3 Q. Could it have been in November of 2012? 4 A. Within the boundaries of reality, it could 5 have been any time if Mr. Phillips was released by 6 November of 2012. 7 Q. Do you have a recollection as to whether or 8 not it occurred in November of 2012 sitting here 9 today? 10 A. Not with sufficient specific -- specificity 11 to say that it indeed incurred in -- occurred in 12 November of 2012. 13 In fact, if it indeed was the case that 14 Mr. Schweickert sold his 50 percent ownership interest 15 in Hunts Point Ventures to the Rudkins on 16 November 19th, 2012, then I would infer that the 17 conversation with Mr. Phillips and the Rudkins at my 18 office did not occur in November of 2012 -- I'm 19 sorry -- in November of 2012 because I believe that 20 conversation took place substantially after the 21 transaction occurred between the Rudkins on the one 22 hand and Steve Schweickert on the other. 23 Q. With regard to the meeting that you referred 24 to at your office which included Chad Rudkins and Mark 25 Phillips, were any others present at that meeting</p>	<p>1 Rudkin? 2 A. Yes. 3 MR. KIMBALL: Nothing further at this time. 4 MS. DeVET: Thank you. We'll reserve. 5 (Deposition recessed at 12:58 p.m.) 6 (Signature reserved.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 175	Page 177
<p>1 beside yourself? 2 A. His last name is Rudkin. 3 Q. Rudkin. Sorry. 4 A. It's not Rudkins plural. 5 And the meeting that I had with Chad and 6 Elizabeth Rudkin on one hand and Mark Phillips on the 7 other hand at my office about Mark Phillips' 8 non-ownership and possible participation in Hunts 9 Point Ventures going forward, the only people involved 10 in that meeting were myself, Chad Rudkin, Elizabeth 11 Rudkin, and Mark Phillips. 12 Q. Do you recall if you took any notes 13 regarding what was discussed at that meeting? 14 A. I did not. 15 Q. Do you recall generally the subject matter 16 of the discussion that occurred at that meeting beyond 17 the description you've given already? 18 A. Yes. 19 Q. And what was discussed? 20 A. Mark wanted a role in Hunts Point Ventures 21 and I believe part ownership and appointment as 22 officer and/or director. 23 Q. And what was the outcome of the discussion? 24 A. No resolution on that subject was reached. 25 Q. Was that being opposed by Chad and Elizabeth</p>	<p>1 SIGNATURE 2 3 I declare under penalty of perjury under the 4 laws of the State of Washington that I have read my 5 within deposition, and the same is true and accurate, 6 save and except for changes and/or corrections, if 7 any, as indicated by me on the CHANGE SHEET flyleaf 8 page hereof. 9 Signed in _____, Washington, this 10 _____ day of _____, 2014. 11 12 13 14 15 JOHN DU WORS 16 Taken: August 25, 2014 17 18 19 20 21 22 23 24 Re: Schweickert v. Hunts Point 25 Cause No.: 13-CV-675 Lauren G. Harty, RPR, CCR #2674</p>

22 (Pages 174 to 177)

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John Du Wors

August 25, 2014

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1 CERTIFICATE
 2 STATE OF WASHINGTON)
) ss.
 3 COUNTY OF KING)
 4 I, the undersigned Washington Certified Court
 5 Reporter, hereby certify that the foregoing deposition
 6 upon oral examination of JOHN DU WORS was taken before
 7 me on August 25, 2014, and transcribed under my
 8 direction;
 9 That the witness was duly sworn by me pursuant
 10 to RCW 5.28.010 to testify truthfully; that the
 11 transcript of the deposition is a full, true, and
 12 correct transcript to the best of my ability; that I
 13 am neither attorney for nor a relative or employee of
 14 any of the parties to the action or any attorney or
 15 counsel employed by the parties hereto, nor am I
 16 financially interested in its outcome;
 17 I further certify that in accordance with
 18 CR 30(e), the witness was given the opportunity to
 19 examine, read, and sign the deposition within 30 days
 20 upon its completion and submission, unless waiver of
 21 signature was indicated in the record.
 22 IN WITNESS WHEREOF, I have hereunto set my hand
 23 this 29th day of August, 2014.
 24
 25 LAUREN G. HARTY, CCR #2674

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1
 2 SEATTLE DEPOSITION REPORTERS, LLC
 3 600 University Street, Suite 320
 4 Seattle, Washington 98101
 206.622.6661
 5
 6 CHANGE SHEET
 7 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,
 SHOWING PAGE, LINE AND REASON.
 8
 9 PAGE LINE CORRECTION AND REASON
 10 _____
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 24 JOHN DU WORS
 Taken: August 25, 2014
 25

23 (Pages 178 to 179)

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John Du Wors

October 10, 2014

Page 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

MARK E. PHILLIPS,

Plaintiff,

vs.

JOHN DU WORS AND AMBER DU WORS,
and their marital community
comprised thereof, et al.,

Defendants.

No. 14-2-03111-4 SEA

DEPOSITION UPON ORAL EXAMINATION

OF

JOHN DU WORS - VOLUME ONE

777 108th Avenue N.E., Suite 2170

Bellevue, Washington

DATE: Friday, October 10, 2014

REPORTED BY: Donald W. McKay, RMR, CRR, CCR 3237

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ALSO PRESENT:

MARK E. PHILLIPS

1

I N D E X

2

EXAMINATION BY

PAGE

3

 MR. KIMBALL..... 7

4

5

6

E X H I B I T S

7

NUMBER

DESCRIPTION

PAGE

8

 Exhibit 1 Engagement Letter and Security Agreement dated May 25, 2010, with attachments 20

9

10

Exhibit 2 Letter dated June 9, 2010, to Hunts Point Ventures, Inc. and Steve Schweickert from John Du Wors, re: Our agreement 45

11

12

13

Exhibit 3 Letter dated May 23, 2011, to Stephen Schweickert from John Du Wors, re: Our agreement 49

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Exhibit 4 E-mail chain, the most recent dated September 4, 2014, to Brandon Wayman and Sam Franklin from Diana Carey, re: Phillips v. Du Wors, et al. 54

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Exhibit 5 Document titled Waiver of Rights and Privileges to Documents, Correspondence and Other Communications Regarding Hunts Point Ventures, Inc. 54

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Exhibit 6 License Agreement entered into April 25, 2008, by and between Mark Phillips and Anything Box, Inc. 68

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Exhibit 7 Verbatim Report of Proceedings Before the Honorable John C. Coughenour, dated February 24, 2011, in the case styled USA vs. Mark E. Phillips 83

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4	Exhibit 9	E-mail chain, the most recent dated May 5, 2008, to Ron Braley from Mark E. Phillips, re: ABI incorporation documents, with attachment	92
5	Exhibit 10	E-mail chain, the most recent dated July 3, 2008, to Kenn Gordon, et al., from Kenn Gordon, re: Anything Box stock purchase	94
6	Exhibit 11	E-mail chain, the most recent dated July 6, 2008, to David Douglass from Michael Morgan, re: Anything Box stock purchase	96
7	Exhibit 12	E-mail chain, the most recent dated July 9, 2008, to Mark Phillips from Kyleen Cane, re: Board meeting via conference call	98
8	Exhibit 13	E-mail chain, the most recent dated August 30, 2008, to Mark Phillips, et al., from David Douglass, re: FW: SEADOCS 50926777 License Agreement (MOD) 4	101
9	Exhibit 14	Minutes of Meeting of the Board of Directors of MOD Systems Incorporated, June 20, 2008	102
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13		International Group Corporation,	
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20		October 1, 2010, to John Du Wors	
21		from Peter Mair, re: FW: Extension	
22		of plea offer deadline	
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24		Doug Lower and Chad Rudkin from	
25		Steve Schweickert, re: Latest text	
		from JD	
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		Phillips and Steve Schweickert from	
		John Du Wors, re: Waiver of	
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	Exhibit 24	Document titled Hunts Point Ventures	168
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		Phillips from John Du Wors,	
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John Du Wors

October 10, 2014

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1	E X H I B I T S (continued)		
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4	Exhibit 26	E-mail dated April 10, 2011, to Steve Schweickert from John Du Wors, re: HPV patent litigation	179
5	Exhibit 27	E-mail dated June 11, 2010, to John DuWors from Steve Schweickert, re: Strategy update meeting today at 4 p.m.	183
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John Du Wors

October 10, 2014

Page 7

1 Bellevue, Washington; Friday, October 10, 2014

2 10:07 a.m.

3

4 JOHN DU WORS called as a witness in the
5 above-entitled cause, being
6 first duly sworn, testified
7 as follows:

8

9 E X A M I N A T I O N

10 BY MR. KIMBALL:

11 Q. Can you state your name for the record, please.

12 A. John Du Wors.

13 Q. Could you spell your last name.

14 A. D-U space W-O-R-S as in Sam.

15 Q. Mr. Du Wors, as you know, I represent, for
16 purposes of today's deposition, the plaintiff, Mark
17 Phillips, in this matter. I'll be asking you some
18 questions under oath. It will be your obligation to
19 answer each question truthfully and completely.

20 If you don't understand a question, please let
21 me know so I can rephrase it. Because if you do proceed
22 to answer a question, I will assume that you did
23 understand it.

24 Of course, you know the rules, which are that if
25 you need to take a break, that's fine at any time. It's

1 just that technically you can't take a break while a
2 question is pending.

3 Finally, I ask that you give audible answers.
4 If a question is answered with a yes or a no, of course,
5 it is helpful for the court reporter that it be answered
6 yes or no rather than an uh-huh or uh-uh.

7 I will do my best not to talk into you or over
8 your answers and I would ask that you do likewise.

9 What is your current age?

10 A. Thirty-six.

11 Q. You graduated from law school. Is that correct?

12 A. I did.

13 Q. What law school is that?

14 A. Seattle University.

15 Q. What year?

16 A. 2003.

17 Q. Do you hold a J.D. degree from that institution?

18 A. I do.

19 Q. Do you have any degrees other than a Bachelor's
20 degree in addition to the J.D.?

21 A. No.

22 Q. Where did you receive your B.A.?

23 A. The University of Washington.

24 Q. What year was that?

25 A. The year 2000.

1 Q. What was your major?

2 A. English.

3 Q. You are licensed to practice in the State of
4 Washington as an attorney. Is that correct?

5 A. I am.

6 Q. When were you first licensed?

7 A. October of 2003, I believe.

8 Q. Are you licensed to practice law in any other
9 states?

10 A. Yes.

11 Q. What states are those?

12 A. California, New York, and in the federal court
13 of the Western District of Wisconsin.

14 Q. Have there ever been any disciplinary
15 proceedings initiated against you by the California
16 State Bar Association?

17 A. As phrased, I think the answer is no.

18 Q. Have there ever been any complaints filed
19 against you in your capacity as an attorney in the State
20 of California?

21 A. Yes.

22 Q. When was that?

23 A. I believe there have been two. Go ahead.

24 Q. I was going to ask you, what were the years?

25 A. I'm just trying to remember. There may have

Page 10

1 been three or four. I think I've had three or four bar
2 complaints filed against me, I think. Maybe just three.
3 The two that I'm talking about, I think are the only two
4 in California. I think that one was in the year 2013 or
5 2014, and I think the other was in the year 2012. It
6 might have been 2013.

7 Q. Do you recall the name of the person or the
8 company that made the complaint in 2013 or 2014?

9 A. Marcia Cano. Last name spelled C-A-N-O.

10 Q. What city does Ms. Cano live in?

11 A. I don't know.

12 Q. Do you know what city she lived in at the time
13 the complaint was filed?

14 A. No.

15 Q. Who was the complainant in the earlier bar
16 complaint you referred to?

17 A. Attorney Dan Balsam.

18 Q. That's B-A-L-S-O-N?

19 A. B-A-L-S-A-M.

20 Q. Do you know what city he practices in?

21 A. Predominantly San Francisco, I believe.

22 Q. Can you tell me briefly a summary of what the
23 allegations were in the 2013 or '14, the more recent
24 case.

25 A. There were a lot of allegations. I don't know

1 that I can remember all of them. But principally, I
2 believe Ms. Cano felt or said that I misadvised her
3 about the effect that filing bankruptcy could have on
4 the sexual harassment claim she was bringing.

5 Q. Had Marcia Cano been your client?

6 A. She had.

7 Q. What was the result or outcome of that
8 complaint?

9 A. It was summarily dismissed by the bar
10 association.

11 Q. Did she file any kind of a civil lawsuit against
12 you?

13 A. No.

14 Q. Has she threatened to do so?

15 A. No.

16 Q. The earlier complaint you referred to, you
17 indicated was brought by a person named Dan Balsam.

18 A. Yes.

19 Q. Can you tell me briefly what the principal
20 allegations were in that matter.

21 A. That I contacted his client by e-mail while his
22 client was represented by counsel.

23 Q. What was the outcome of that complaint?

24 A. It was summarily dismissed by the bar
25 association.

1 Q. You said there may have been other bar
2 complaints as well.

3 A. I know there is one, but I think that's
4 Washington. I think that's it. I think there have been
5 a total of three.

6 Q. And none in New York?

7 A. No.

8 Q. When was the Washington bar complaint filed?

9 A. Somewhere between 2009 and 2012.

10 Q. Do you recall the name of the complainant?

11 A. Barely. I think his first name was Russ,
12 R-U-S-S. I think his last name was Stevens, but I'm not
13 sure.

14 Q. What were the principal allegations in that bar
15 complaint?

16 A. You know, I really didn't understand that bar
17 complaint very well. The only allegation I recall was
18 that Mr. Stevens, if that was his last name, alleged
19 that I would be appearing on a case as counsel of record
20 for the client my law firm represented, but that I
21 actually did not appear as counsel of record alongside
22 three or four other attorneys in my firm.

23 Q. What was the disposition of that bar complaint?

24 A. It was summarily dismissed by the bar
25 association.

1 Q. Are there any bar complaints pending currently
2 in either California, New York, or Washington against
3 you, other than the ones that you've discussed just now?

4 A. No. Oh, I forgot, there is one more bar
5 complaint brought by Mark Phillips.

6 Q. A moment ago, you used the term "my firm" to
7 describe the law firm where you work. Is that correct?

8 A. I did.

9 Q. What firm is that?

10 A. The law firm doing business as Newman | Du Wors,
11 which is an entity whose legal name is Newman & Newman,
12 Attorneys at Law, LLP.

13 Q. Do you know if Newman & Newman LLP has
14 registered a trade name of Newman | Du Wors?

15 A. I don't know.

16 Q. Are you an owner or principal in that law firm?

17 A. I don't know what you mean by "principal," so
18 that is vague. As an owner, I'm going to assume what
19 you mean is equitable owner of the business entity,
20 meaning to say that I have some ownership interest in
21 the actual entity, itself. The answer to that is no.

22 Q. Do you receive a profit interest based on the
23 profitability of the firm?

24 A. Yes.

25 Q. But you don't have an equity interest in the

1 firm. Is that correct?

2 A. Correct. I have a profit sharing bonus as part
3 of my W-2 wages.

4 Q. So you do not receive a K-1?

5 A. I do not.

6 Q. How long have you been affiliated with
7 Newman | Du Wors or Newman & Newman LLP?

8 A. Since May of 2006.

9 Q. Between October 2003 and May of 2006, were you
10 working as an attorney?

11 A. I'm sorry. Ask that again.

12 Q. Between October 2003 and May of 2006, were you
13 working as an attorney?

14 A. Yes.

15 Q. Where were you working? What city?

16 A. Two separate law firms. From approximately
17 August of 2004 until May of 2006, when I left and came
18 to work at my current firm in Seattle, I previously had
19 been working at the law firm of Hunter Malloy &
20 Salcido, last name spelled S-A-L-C-I-D-O. I worked
21 there for about two years. That was in the City of
22 Pasadena, California.

23 And then before that, I had been working in the
24 City of Seattle for the law firm known as the
25 Blankenship Law Firm, B-L-A-N-K-E-N-S-H-I-P.

1 Q. When did you first meet Mark Phillips?

2 A. Summer of 2010.

3 Q. How did that meeting come about?

4 A. He came to my office.

5 Q. Did he contact you initially or did you contact
6 him?

7 A. I don't remember for certain. I do remember
8 that his matter was referred to me by way of two
9 different people independently.

10 Q. Who were those people?

11 A. One was Bernie Hansen, H-A-N-S-E-N; the other
12 was Jim Smith.

13 Q. Is Bernie Hansen an attorney?

14 A. No.

15 Q. Is Jim Smith an attorney?

16 A. Yes.

17 Q. Do you know what city he practiced in at the
18 time?

19 A. Jim?

20 Q. Yes.

21 A. At minimum, Seattle. I couldn't tell you where
22 else he might have practiced.

23 Q. Who is Bernie Hansen?

24 A. Bernie is just a social and professional
25 acquaintance that I know from various interactions and

1 venues. He's a business consultant. I met him when he
2 was running the education network for a high-tech
3 business incubator in the Tri-Cities whose name I don't
4 recall. I want to say it might have been called the
5 Three Rivers Education Network. Basically, it was a
6 non-profit division of the Pacific Northwest National
7 Laboratory, operated by the Batelle corporation as sort
8 of a giving back kind of arm of the nuclear powerplant
9 down in Hanford. He had sort of a stable of Ph.D. types
10 coming out as entrepreneurs, and Bernie led these sort
11 of classes for them and acquainted them with resources,
12 professional and otherwise, to try and help them out in
13 starting their entrepreneurial ventures.

14 At some point, by some fashion, Bernie and I got
15 into contact and he referred me a couple of cases. But
16 separately, Bernie had also referred cases to my law
17 partner, Derek Newman, before I had even met Derek
18 Newman or joined the firm. So Bernie and Derek had an
19 independent relationship with each other.

20 Additionally, Bernie is a Bainbridge Islander,
21 and I live on Bainbridge Island as well. I know Bernie
22 like ten different ways. I'm a co-founder in a company
23 called Green Canopy. One of my fellow co-founders and
24 fellow shareholders is a guy named Peter Holland. Peter
25 and Bernie were partners in a venture called Suma

1 Capital.

2 I guess, to sum it all up, Bernie is just within
3 my arena of professional colleagues because he does a
4 lot of high-tech business. And I'm a business and
5 intellectual property lawyer, so we have bumped into
6 each other a bunch of different ways since late spring,
7 early summer of 2006.

8 Q. A moment ago, you indicated that you're a
9 shareholder in a company called Green Canopy. Is that
10 correct?

11 A. I am.

12 Q. Is that a limited liability company?

13 A. I don't think so. Our corporate structure is
14 made up of several different entities within our
15 corporate family. I don't know that I recall what the
16 ultimate parent holding company's legal designation is,
17 whether it's an LLC or a corporation. I think it's a
18 corporation named G2B Ventures, Inc. G as in George,
19 number two, B as in boy, Ventures, Inc., I think. It's
20 not that currently. I think it was that at one point.
21 We may have converted.

22 Q. There is one matter that I wanted to address as
23 well that I omitted a moment ago. You indicated a
24 company name of Batelle. Is that B-A-T-E-L-L-E?

25 A. I don't know. I have a vague recollection of

1 maybe having seen it on paper once. I think it's
2 B-A-T-T-E-L, but I'm not sure.

3 Q. Are they affiliated with the Batelle Institute
4 in Seattle?

5 A. Tell me what the Batelle Institute does.

6 Q. It's a research organization located in the
7 Laurelhurst area.

8 A. Probably so. If I understand correctly -- to be
9 clear, my ties to that company were non-existent or
10 barely existent. I just showed up and gave a lecture
11 one time. It wasn't even a lecture for Batelle. I was
12 giving a lecture for the Pacific Northwest National
13 Laboratory, which I understood to be a subsidiary or
14 division of Batelle. But they -- if I understand
15 correctly, they either -- I think they might be a
16 non-profit; or if they are a for-profit, they do mostly
17 government work, managing nuclear powerplants, I think.
18 So they have -- you know, in addition to their nuclear
19 powerplant management activities, I think they do a lot
20 of stuff relating to research and scientific innovation.
21 I guess I've always assumed they did that stuff as a way
22 of making themselves a little more cosmetically
23 acceptable, given the dirty association some people have
24 with what they do as their main business.

25 Q. What kind of business is Green Canopy engaged

1 in?

2 A. We buy residences, mostly in city fill -- mostly
3 in the City of Seattle, and we rehabilitate them with a
4 specific view toward enhancing environmental efficiency
5 and reducing their carbon footprint. So we buy them,
6 typically on the cheap. A lot of times, they're pocket
7 listings or other kinds of off-market deals. We
8 redesign them and rebuild them. When we first buy them,
9 we take a reading of their green gas emissions. We then
10 do our rehab work, and we come in and take another
11 reading of their green gas emissions, show the delta as
12 part of the selling point associated with our efforts to
13 resell the home. We resell the home through our sort of
14 team of brokers and try to make a profit.

15 Q. Are you a shareholder in any other companies
16 besides Green Canopy, a shareholder or equity owner?

17 A. I have -- oh, yes. At minimum, I'm currently
18 the sole owner of an inactive corporation called
19 J.D. Du Wors, Inc.

20 Q. You said that was currently inactive?

21 A. Not inactive in terms of its state of
22 registration with the Washington Secretary of State, but
23 inactive in the sense that I haven't done any business
24 using it yet, but intend to do so in the future.

25 Q. And you've never done business in the company,

1 J.D. Du Wors, I guess?

2 A. No. Not yet.

3 Q. Any other companies?

4 A. There are two businesses where I have been
5 promised stock or have contracted for stock -- actually,
6 skip the contracted part -- I've just been promised
7 stock. But nothing has happened to cause me to be in
8 receipt of any stock in either of those businesses.

9 Q. Is the consideration to be given by you for the
10 stock, should you receive it, based on legal services?

11 A. No. The general idea has been that I will sit
12 on the board and do consulting services and board
13 advisory. I'm not on the board yet for either business.

14 Q. Do you recall the names of either of those
15 businesses?

16 A. One is called Farmhouse, Inc., and the other is
17 called Raddish, Inc.

18 Q. Can you spell that, please.

19 A. R-A-D-D-I-S-H.

20 Q. Are both of those companies formed in
21 Washington?

22 A. They are.

23 (Exhibit 1 marked for identification.)

24 BY MR. KIMBALL:

25 Q. Mr. Du Wors, you've been handed a document

1 marked as Exhibit 1. Can you tell me if you've ever
2 seen that document before?

3 A. I cannot tell you for sure if I have seen this
4 document before.

5 Q. There appears to be a signature of John Du Wors
6 or label of John Du Wors on page five of Exhibit 1. Can
7 you tell me if that appears to be your signature?

8 A. Well, most of it looks like my signature, but
9 parts of it don't. I've got a pretty consistent
10 signature. You know, this might be mine. I might have
11 signed this document. I'd have to go back and compare
12 it to what's on our server back at the office to make
13 sure it's indeed mine. But the J looks like my J. The
14 rest of the signature doesn't look like my signature.

15 Q. Did you enter into a written engagement
16 agreement with Mark Phillips for legal services?

17 A. Yeah. At least one.

18 Q. Was at least one of those agreements entered
19 into on or about May 25th of 2010?

20 A. I can't recall the precise date, but that sounds
21 approximately correct.

22 Q. I'd like you to take a moment and look at
23 Exhibit 1 -- in particular, the first five pages -- and
24 let me know if you have any reason, sitting here today,
25 to believe that Exhibit 1 is not a true and correct copy

1 of an engagement agreement you and Mr. Phillips entered
2 into on or about May 25th of 2010.

3 A. Do you mean Exhibit A?

4 Q. Exhibit 1.

5 A. Oh, I'm sorry. I thought you meant Exhibit A to
6 the agreement. So Exhibit 1, the retainer letter,
7 itself.

8 Can I have that question read back.

9 (Question read by the reporter.)

10 THE WITNESS: I just couldn't tell you either
11 way. I'd have to compare it to the scanned copy we have
12 back on our server at the firm. This is too long ago
13 for me to remember.

14 BY MR. KIMBALL:

15 Q. With regard to what you've described as a
16 scanned copy on the server back at the firm, would that
17 be an unsigned copy or a signed copy?

18 A. It would be signed. We'd scan it after Mark
19 Phillips signed it, and then save it on the server in
20 some kind of an appropriate location.

21 Q. Would the scanned copy also bear your signature
22 as well?

23 A. Most likely.

24 Q. Can you describe what the purpose of
25 representation was or what the nature of the

1 representation was going to be as described in
2 Exhibit 1.

3 A. The nature of representation as described in
4 Exhibit 1, or the nature of representation as decided by
5 me and Mark when he decided to retain me?

6 Q. Let's talk about first what was discussed
7 between you and Mark Phillips when he decided to retain
8 you.

9 A. Well, I understood that Mark had a dispute with
10 MOD Systems and folks -- and/or some of the folks at MOD
11 Systems that he wanted me to help him handle. He was
12 having representation ended or disengaged or terminated
13 by a law firm called Donovan Flora, and he needed me to
14 pick the case up from them.

15 Q. Did the scope of representation, as you've just
16 described it, vary from that which is discussed in
17 Exhibit 1?

18 A. Yes.

19 Q. How did it vary?

20 A. Well, let's see. We appeared on matters styled
21 MOD Systems versus Mark Phillips, and Mark Phillips
22 versus MOD Systems. I think we appeared on the case
23 styled Bob Arnold versus Mark Phillips, but I don't
24 recall when we appeared on that case. I don't think we
25 appeared on the A Dot case. We also appeared as Mark's

1 criminal counsel in the criminal prosecution brought by
2 the Federal Government for various federal fraud claims
3 that were initiated against Mark. We represented Mark
4 with respect to his transfer of intellectual property to
5 Hunts Point Ventures. I don't know what else ultimately
6 came of the representation besides those matters.

7 I need to use the restroom soon, so let me know
8 when you're in between questions.

9 MR. KIMBALL: You can do it now.

10 THE WITNESS: Okay.

11 (Recess taken from 10:35 to 10:40.)

12 MR. KIMBALL: Back on the record.

13 BY MR. KIMBALL:

14 Q. Mr. Du Wors, before the break, I was asking you
15 some questions about Exhibit 1 and also your
16 representation of Mark Phillips. Do you recall which
17 cases you actually entered into a -- strike that -- in
18 which you executed a notice of appearance?

19 A. I'm pretty sure I just answered that question,
20 so I'll refer to my previous answer. But once again, I
21 believe it was the case that we appeared on MOD Systems
22 versus Mark Phillips, Mark Phillips versus MOD Systems,
23 Bob Arnold versus Mark Phillips, and the United States
24 of America versus Mark Phillips.

25 Q. And the last case was the criminal case that you

1 referred to a moment ago?

2 A. Correct.

3 Q. Did Mr. Phillips ask you to enter an appearance
4 on his behalf in the criminal case that you referred to?

5 A. I believe so, yeah.

6 Q. Did he discuss with you the reason why he wanted
7 you in the case?

8 A. I don't have a recollection of a particular
9 conversation in that regard. I think it would have been
10 the case that he was more agreeing with the
11 recommendations of Peter Mair, which was that Pete Mair
12 felt like he couldn't handle the case on his own because
13 he didn't really understand the intellectual property
14 and corporate law components of the case; rather Pete
15 was sort of your typical experienced criminal defense
16 lawyer who got the criminal procedure aspects of the
17 case and, you know, the general federal torts -- federal
18 claims being asserted, but didn't really understand
19 shareholder voting and patents and stuff like that.

20 Q. So your involvement in the case was relating
21 more to the substantive issues involving IP and
22 corporate governance as opposed to criminal procedural
23 issues?

24 A. That was certainly the idea, yeah. I mean, I
25 don't do criminal defense work. Besides Mark's case, I

1 think I've probably only dabbled in one or two cases
2 over the course of my career, mostly as favors for
3 friends.

4 What happened was that Mark had previously
5 retained Dave Bukey, who I think was regarded as very
6 good, but had run up a fee bill. He was a private
7 attorney that Mark couldn't really afford. Mark didn't
8 have any money at that point. I think we're talking
9 about either very late in 2010 or very early in 2011.
10 Dave Bukey gave a fee estimate of something in the range
11 of a million dollars to complete the trial. At that
12 point, Hunts Point Ventures, I think was Mark's only
13 source of funding for either criminal defense work or
14 his civil litigation.

15 So Steve Schweickert over at Hunts Point
16 Ventures asked me if I could proceed with what I said I
17 might be able to do, which was tap Tom Hillier on the
18 shoulder for a favor. Tom is a social acquaintance of
19 mine and kind of a professional acquaintance of mine and
20 also a neighbor on Bainbridge Island. Tom, at the time,
21 was running the federal office of public defense here in
22 Seattle, which is the entity that normally would have
23 represented Mark Phillips in his criminal defense case,
24 except that they had already accepted representation of
25 Jan Wallace following Jan Wallace's receipt of a

1 so-called target letter, which puts her on notice that
2 the Federal Government is investigating her for
3 potential criminal claims. It's the triggering event
4 that entitles her to receive public defense if she can't
5 afford private criminal defense.

6 Anyway, Tom Hillier's office had a conflict --

7 Q. Can you give me an --

8 A. I wasn't finished.

9 -- and because of the conflict, couldn't
10 represent Mark, himself. So I asked Tom Hillier if he
11 could find Mark a panelist from the public defense
12 panel, but not one that would be new and didn't know
13 what he or she was doing, but rather someone with a lot
14 of experience that would take interest in the case. As
15 a favor to me, Tom tapped Pete Mair.

16 At that time, Mark was, I think, the biggest
17 white-collar criminal prosecution that had come through
18 the Western District of Washington in years and years.
19 They thought it was, you know, another Madoff case.
20 They were ultimately wrong. That Madoff case they were
21 looking for ended up coming shortly after Mark's
22 conviction with a criminal defendant named Berg. But in
23 any event, Tom didn't have any trouble getting the
24 interest of a big-time criminal defense lawyer on the
25 panel, which was Pete Mair. Then, as I told you, Pete

1 said he didn't understand the corporate or IP stuff, so
2 he needed me to sort of ride along sidesaddle and help
3 out.

4 Q. With regard to the MOD Systems v. Phillips
5 matter, can you tell me, in your own words, your
6 understanding of the scope of representation and the
7 services you were to provide in that case.

8 A. In MOD Systems versus Phillips.

9 Q. Yes.

10 A. Gosh, without looking at the documents, I'd have
11 trouble telling you everything; but ultimately, what it
12 amounted to was representing Mark, to defend Mark
13 against MOD Systems' tort claims against him, including
14 but not limited to fraud, and I don't remember what
15 else. Also, to represent Mark Phillips in his pursuit
16 of a \$5 million license fee from MOD Systems.

17 Initially, I think there was discussion of my
18 firm representing Mark with respect to the arbitration
19 that ensued from Bob Arnold's derivative demand, but I
20 think -- I think I had been retained for like a day or
21 something before that arbitration judgment issued. And
22 there was some talk about trying to potentially appeal
23 that arbitration order.

24 Q. What kind of work did you actually do in the MOD
25 Systems v. Phillips case?

1 A. I couldn't tell you which captioned case was
2 where the work took place. I think they might have been
3 all consolidated at some point. The litigation was
4 fragmented and a little scattered.

5 For instance, I can tell you it's in the Mark
6 Phillips versus MOD Systems case that Mark was suing
7 for, ultimately, breach of contract based on the failure
8 of MOD Systems to pay Mark a \$5 million license fee owed
9 to him by virtue of an agreement that had been entered
10 into, I think, in August of 2008, maybe September
11 2008 -- anyway, in the fall of 2008, I think -- where
12 Mark Phillips contributed title to some intellectual
13 property and license rights to some other intellectual
14 property in exchange for an agreed payment of five
15 million bucks.

16 In another lawsuit brought against Mark, MOD
17 Systems was seeking damages and rescission in
18 association with that license and contribution
19 agreement, as well as, I think, damages based on some
20 other stuff I don't entirely remember.

21 So we appeared, you know, anyway, on one or more
22 of -- I think we appeared on multiple of those matters,
23 but ultimately began the process of fighting to try and
24 get Mark either a return of the title and license rights
25 to the intellectual property that he had contributed one

1 way or another to MOD Systems in the fall of 2008, or,
2 alternatively, his five million bucks.

3 When we first appeared, I think kind of the
4 first order of business was to try to untangle what Mark
5 referred to as a Gordian knot, which was a big mess
6 associated with an order compelling production of some
7 computer hard drives that the Court found Mark had in
8 his possession. Mark had not produced them. I think
9 the Court had issued an order compelling production and,
10 I think, an associated sanctions order. In other words,
11 if Mark didn't produce them by a particular day,
12 sanctions in some amount were going to start issuing at
13 a daily rate of some amount. I think we had concerns
14 about that, because the hard drives that had been the
15 subject of the order to compel also contained some
16 privileged information. I think the order compelling
17 production also said that we, as his attorneys, or
18 whoever was serving as his counsel of record, wasn't
19 allowed to look at the hard drives before turning them
20 over to opposing counsel, which we viewed as problematic
21 because it restrained our ability to review them for
22 privilege and create a privilege log associated with
23 whatever documents should not be produced to MOD Systems
24 in that case.

25 Q. Did you prepare any pleadings, such as

1 complaints, amended complaints, answers, counterclaims,
2 or amended answers or counterclaims in the MOD Systems v.
3 Phillips case?

4 A. Well, it depends on your definition of
5 pleadings. We prepared lots of documents in that case.
6 I don't know if we prepared any of the pleadings that,
7 you know, asserted claims or defenses in that case, but
8 we certainly brought a lot of motions and defended a lot
9 of motions.

10 Q. What was the outcome of the claims against Mark
11 Phillips by MOD Systems in that case?

12 A. All of the claims by and between Mark Phillips
13 and MOD Systems were resolved by way of a settlement.

14 Q. When did that settlement occur?

15 A. Sometime in the end of 2010 or beginning of
16 2011.

17 Q. Did you represent Mr. Phillips in those
18 settlement discussions?

19 A. I did.

20 Q. Can you describe generally what the settlement
21 terms were?

22 A. Not without violating the confidentiality order.
23 I would have to -- I'd have to do a bunch of things.
24 I'd have to have this transcript sealed at minimum. I
25 would have to review the settlement agreement, itself,

1 to see if I'm even allowed to tell you without a motion
2 to compel.

3 Q. With regard to the confidentiality order --

4 A. Order or provision within the agreement?

5 Q. Provision within the agreement.

6 A. Yes?

7 Q. Did Mr. Phillips sign that agreement?

8 A. Which agreement? The settlement agreement?

9 Q. The settlement agreement which contained the
10 confidentiality provision.

11 A. As I recall.

12 Q. Was the settlement agreement that you referred
13 to a moment ago the result of going through a formal
14 mediation or settlement conference process?

15 A. No.

16 Q. So no mediator, such as someone working at JAMS
17 or JDR or similar entities, was used to achieve that
18 settlement. Correct?

19 A. Well, I mean, I guess that depends on how you
20 analyze it. Mark had been through formal mediation on
21 those claims. I don't know who the mediator was. But
22 he had been at that mediation, represented by my
23 predecessor counsel, which was either Mark Johnson at --
24 boy, what the hell is the name of that firm?

25 MR. FRANKLIN: Johnson Flora.

1 THE WITNESS: Mark Johnson at Johnson Flora.

2 Is there a Donovan in that firm's name?

3 MR. FRANKLIN: Donovan Flora is one guy.

4 THE WITNESS: Donovan Flora is what it is.

5 Okay.

6 Mark had been represented either by Mark Johnson
7 from Johnson Flora or Tony Gewald from Lasher Holzapfel.

8 So, I mean, yeah, the settlement came following
9 mediation efforts in that respect.

10 BY MR. KIMBALL:

11 Q. Did you enter a formal notice of appearance on
12 behalf of Mark Phillips in the Arnold v. Phillips case?

13 A. Yep. You'd have to specify a little bit -- oh,
14 I beg your pardon. The answer is yes.

15 Q. When did that occur?

16 A. Oh, I don't know.

17 Q. Did you represent any other defendants in the
18 Arnold v. Phillips matter?

19 A. No -- oh -- I don't remember. I suppose I might
20 have represented A Dot or another of Mark's entities. I
21 just don't recall.

22 Q. Can you describe generally what you understood
23 to be the scope of your work in the Arnold v. Phillips
24 matter.

25 A. Well, the scope of that work was to defend the

1 claims being asserted against Mark. I can only
2 generally describe what those claims were.

3 Bob Arnold had been an investor in Banana
4 Corporation, which I think had also, at one time or
5 another, been known as Meta-Wallet. And Arnold had
6 asserted a derivative demand with respect to Banana
7 Corporation, alleging that Mark Phillips had wasted or
8 misappropriated Banana Corporation assets and funds.

9 Mark responded to the derivative demand by
10 Arnold by appointing a demand review committee to
11 investigate the appropriateness of Arnold's derivative
12 demand and reach a conclusion as to whether Banana
13 Corporation should take action against Mark Phillips
14 and/or any other third party in response to that
15 derivative demand.

16 As I recall, Jim Smith had been vested with
17 power of attorney on behalf of the corporation, both to
18 investigate those claims and also to compromise them.
19 And Jim Smith, I believe, resolved the claims asserted
20 by Arnold against Banana Corporation by getting a mutual
21 release with Arnold -- by and between Arnold and Banana
22 Corporation, and assigning all of Banana Corporation's
23 rights to sue Mark Phillips and other parties to Bob
24 Arnold or perhaps Bob Arnold's designee. I'm not sure.

25 So the civil action styled Arnold v. Phillips

1 was the case in which Arnold asserted those claims that
2 had been assigned to him from Banana Corporation for
3 breach of fiduciary duty and corporate negligence.

4 Q. Did you file an answer in that case?

5 A. I don't recall.

6 Q. Do you recall if you ever filed a motion for
7 summary judgment in that case?

8 A. I don't recall.

9 Q. Did you withdraw as counsel from representing
10 Mr. Phillips in that case?

11 A. We did.

12 Q. When did that occur?

13 A. I don't recall.

14 Q. Why did it occur?

15 A. Mark was in jail, and no one was paying us to
16 represent Mark; and because we weren't being funded, we
17 withdrew.

18 Q. Do you recall whether or not you gave advance
19 notice of the withdrawal to Mr. Phillips?

20 A. I believe we did, but I don't remember any
21 details associated with it. Oh, no. I do know that we
22 gave advance notice, because I got a piece of
23 correspondence from Mark about it.

24 Q. Did you give notice in the form of a notice of
25 intent to withdraw?

1 A. I don't know. I think so, yes.

2 Q. Do you recall if you filed a motion for an order
3 allowing you to withdraw?

4 A. We did.

5 Q. In that case?

6 A. Yeah, I think so. I mean, it was a long time
7 ago. I don't recall.

8 There were two separate sort of withdrawal
9 activities. We filed a notice of intent to withdraw or
10 took whatever procedures were necessary to withdraw. At
11 one point -- I want to say early in 2011 or '12 -- I'm
12 not sure.

13 Then Jeff Smyth, counsel for Arnold, complained
14 about the appropriateness of that notice. So shortly
15 after we -- I think because he wanted us to answer
16 Arnold's summary judgment motion on Phillips' behalf.
17 So we filed whatever documents were necessary to move
18 whatever his complaints were about it, and the Court
19 agreed with us and issued an order acknowledging our
20 withdrawal.

21 And Mark Phillips -- I know that Mark Phillips
22 had received notice of the withdrawal, because when he
23 got our notice, either when he was in the Federal
24 Detention Center or Camp Sheridan, whichever of the two
25 he was in when he received that notice, he sent me

1 correspondence saying, "I thought Hunts Point Ventures
2 was supposed to pay for my continuing defense in the
3 Arnold case."

4 Q. Did you reply or respond to his communication?

5 A. I don't recall.

6 Q. Did you ever talk to him about his concerns in
7 that communication?

8 A. I don't recall. I don't think that I ever had
9 access to communicate with Mark via telephone when he
10 was at Camp Sheridan.

11 Q. Do you recall if Mark Phillips ever called you
12 regarding the withdrawal issue from prison or from jail?

13 A. Not that I recall.

14 Q. You indicated a moment ago that Jeff Smyth
15 questioned the appropriateness of the withdrawal.

16 A. Yes.

17 Q. What do you mean by that?

18 A. I don't recall. He brought a motion for summary
19 judgment, and we said, "We note that you are putting us
20 on the certificate of service with respect to this
21 motion for summary judgment, but we're not counsel for
22 Phillips anymore." And he said, "I believe your
23 withdrawal was invalid in some respect, so I'm going to
24 deem it that you indeed did not withdraw, and you have
25 to answer for Phillips even though Phillips is in jail;

1 and if you don't answer for Phillips, I'm going to take
2 the position that he missed the opposition deadline for
3 a summary judgment motion, therefore, he'll lose the
4 summary judgment motion." So we said, "All right.
5 Fine. We'll take it to the Court."

6 We took it to the Court with some kind of an
7 ex parte motion. The Court said, "Yep. Nope, you've
8 withdrawn." I think the outcome was that the Court
9 postponed Arnold's summary judgment motion until Mark
10 would be able to respond to it either from prison or
11 from outside of prison once Mark was released. I don't
12 recall. But the Court essentially ordered that we were
13 withdrawn, and Smyth agreed, and Mark was on his own to
14 answer that summary judgment motion.

15 Q. You indicated that you filed an ex parte motion
16 to get that determination by the Court. Did you give
17 Mr. Phillips notice of that motion?

18 A. I don't recall even if it was an ex parte
19 motion. I think it was something along those lines.
20 But I don't remember the procedural details associated
21 with that. I'd have to look at our file on that case to
22 tell you for sure.

23 Q. Was the judge who made the decision on your
24 withdrawal Erlick?

25 A. I don't know. At least I don't recall.

1 Q. Did you file any kind of response in opposition
2 to the pending motion for summary judgment prior to your
3 cessation of work and/or withdrawal?

4 A. No.

5 Q. Do you recall if you entered a notice of
6 appearance on behalf of Mark Phillips in an A Dot v. Bay
7 case?

8 A. I don't recall having done that. I believe that
9 I did not.

10 Q. Do you recall what the nature of that case was?

11 A. I believe it was a case brought in federal court
12 under the Computer Fraud and Abuse Act, among perhaps
13 other statutes.

14 Q. Do you know who the plaintiff was in that case?

15 A. I believe, as the case styling reflects, that it
16 was A Dot Corporation.

17 Q. Was Mark Phillips behind that; do you know?

18 A. Behind that?

19 Q. I'll rephrase it. Was Mark Phillips the real
20 party in interest behind the A Dot filing?

21 A. I don't know what you mean by "real party in
22 interest." Mark Phillips was behind a lot of things.

23 Q. Was Mark Phillips associated with A Dot at the
24 time that the lawsuit was filed?

25 A. I don't have independent personal knowledge of

1 what Mark's role with respect to A Dot was, except that
2 he told me he owned A Dot.

3 Q. Do you know if you ever drafted a complaint in
4 the Phillips v. MOD case?

5 A. I don't believe that I did, but I don't recall.
6 Someone drafted a complaint, because the action was
7 pending. The jurisdiction had been opened on a case.

8 Q. What court was that case pending in?

9 A. I think it was King County.

10 Q. King County Superior Court?

11 A. Yes.

12 Q. Did you enter a notice of appearance in that
13 case?

14 A. Well, we appeared as counsel of record in the
15 case. I don't know what document it was that initiated
16 or effectuated our appearance as counsel of record for
17 Mr. Phillips in that case. It might have been a notice
18 of appearance or some other document.

19 Q. Mr. Du Wors, I note that as you're testifying
20 now, you are looking at your phone. Are you looking at
21 your phone for purposes of refreshing your memory or
22 recollection?

23 A. No. I have a case styled Peterson versus
24 X2 Biosystems. And we just got an order from the Court
25 on a motion to compel that I brought successfully. And

1 I've been waiting on pins and needles to find out what
2 would happen with the motion. Having seen an e-mail
3 coming from the Court, I wanted to read the order that
4 was attached to the e-mail as a PDF so I could see what
5 indeed occurred as the outcome, which turns out to be a
6 happy event for me.

7 Q. Do you recall any instructions from Mark
8 Phillips concerning whether or not a complaint should or
9 should not have been filed in the Phillips v. MOD matter?

10 A. I don't recall any such instructions as I sit
11 here.

12 Q. Did Mark Phillips ever make a payment of a
13 retainer or any deposit to you for representation in any
14 case or group of cases?

15 A. My recollection on that point is vague and hazy.
16 I know that Mark was not able to fund the full requested
17 retainer, but eventually Hunts Point Ventures did fund a
18 retainer to commence work in the Phillips versus MOD and
19 MOD versus Phillips cases.

20 Q. Do you recall what that retainer amount was?

21 A. No. It was either a retainer of \$50,000 or it
22 was a smaller retainer with a budget of \$50,000. I
23 think I told Mark and the folks over at Hunts Point
24 Ventures that I would need about 50,000 bucks to file a
25 series of five or six rapid-fire emotions -- emotions --

1 I think that's a Freudian slip -- five or six rapid-fire
2 motions and oppositions and related papers in order to
3 try and get that civil litigation back on its wheels
4 because it was, as Mark described, a Gordian knot when
5 it came to me. I think I told those guys to set aside
6 50 grand so I could do a bunch of aggressive stuff to
7 try and set it straight and see if we could move forward
8 on it.

9 Q. Did you do what you've just characterized as a
10 bunch of aggressive stuff?

11 A. Yeah. Oh, yeah. That was a period where there
12 was a lot of aggressive motion practice all early on.
13 Yeah, had the whole firm working on it.

14 Q. What were those steps?

15 A. I don't remember. It was a bunch of motions, I
16 think at least one or more of them relating to that
17 discovery order that required Mark Phillips to produce
18 those hard drives without showing them to his counsel.
19 I don't remember what the outcomes of those were.

20 Q. Was there a period of time in which you believed
21 that Mark Phillips had not paid the retainer or fee
22 deposit that he had agreed to do?

23 A. Well, sure.

24 Q. When did that occur?

25 A. Well, I'm looking at this Exhibit 1 here, which

1 is dated May 25, 2010. Assuming that is either the
2 original retainer agreement or one of the early retainer
3 agreements we entered into with Mark Phillips, then I
4 can tell you that at or kind of around that time, we had
5 an initial agreement with Mark that he would fund a
6 retainer by some amount, only to find out that Mark
7 didn't have any money to fund that retainer or
8 completely fund that retainer. So instead, we
9 negotiated that he would grant us a lien on his condo in
10 order that we would have some kind of security
11 associated with Mark's retention of us. But as it
12 turned out, Mark had already granted a security interest
13 in that condo in favor of the law firm of Smith
14 Hennessey, acting as assignee for the benefit of
15 creditors of Banana Corporation, without telling us, and
16 without telling Smith Hennessey that he was doing that
17 in favor of us. As a result, we, I think, recorded a
18 perfecting notice in the form of, I believe, a short
19 form deed of trust, giving us superiority over Smith
20 Hennessey for a brief period, until we agreed to
21 subordinate to Smith Hennessey with respect to that
22 security interest, which subordination placed us out of
23 money, as it were, with respect to our putative lien on
24 Phillips' condo. So we were required to look elsewhere
25 for greater security.

1 Q. Were there any written agreements concerning the
2 transaction you just described authorizing the placement
3 of a deed of trust on the condo?

4 A. Yeah. Newman & Newman's placement of a deed of
5 trust on the condo?

6 Q. Yes.

7 A. Yeah.

8 Q. Those are between your firm or the firm of
9 Newman & Newman and Mark Phillips?

10 A. As I recall, yeah.

11 Q. They were in writing?

12 A. Yeah.

13 Q. Did any other person or entity contribute to any
14 fee deposit or retainer for the benefit of Mark Phillips?

15 A. Hunts Point Ventures, as I recall.

16 Q. How much was the amount on that retainer or fee
17 deposit?

18 A. Well, like I told you, it might have been
19 \$50,000 or it might have been something less with a
20 corresponding budget of 50,000, but I don't recall.

21 Q. With regard to Exhibit 1, were there any
22 documents ever executed by either you or someone at
23 Newman & Newman and Mark Phillips which explicitly
24 modified any of the terms set forth in Exhibit 1?

25 A. I don't recall.

1 (Exhibit 2 marked for identification.)

2 BY MR. KIMBALL:

3 Q. You've been handed a document marked as
4 Exhibit 2. I'd like you to take a look at that document
5 and let me know if you have seen it before.

6 A. Again, it looks familiar, but I'd have to
7 compare it with the documents we have on file back at my
8 firm to ensure that it is indeed authentic.

9 Q. Do you recall signing an agreement on or about
10 June 9th of 2010 in which Hunts Point Ventures and Steve
11 Schweickert were identified as clients?

12 A. Yes. On or about that date. Approximately in
13 that range, yeah.

14 Q. Looking at page five of Exhibit 2, do you have
15 any reason to doubt that that is a copy of the page
16 bearing your signature?

17 A. You know, it's a funny deal. Again, it kind of
18 looks like my signature. I would be happy and ready to
19 believe that that is indeed my signature, but a
20 non-ordinary version of it. It looks like my J. The
21 rest doesn't look that much like how I normally sign my
22 name. But it wouldn't surprise me if that indeed was my
23 signature and I was just doing a kind of quick short
24 form that day.

25 Q. In May and June of 2010, did you have and use a

1 pre-made signature stamp?

2 A. No. Never have.

3 Q. Can you describe generally what your
4 understanding of the scope of representation was as
5 referred to in Exhibit 2.

6 A. Well, I think the document speaks for itself, so
7 I find the question objectionable on that basis. But
8 the text here says, "You have engaged us to represent
9 you, Mark Phillips and Hunts Point Ventures..., in the
10 following matters: MOD Systems Incorporated, et al.,
11 versus Mark Phillips, et al., King County Superior Court
12 Case No. 09-2-07963-3 SEA; Robert Arnold, et al., versus
13 Mark Phillips, et al., King County Superior Court
14 Case No. 10-2-10227-2 SEA; A Dot Corporation v. Anthony
15 Bay, et al., Western District of Washington Case
16 No. 2:10-cv-00549-RSM."

17 Q. What were the issues involving Hunts Point
18 Ventures in the MOD Systems v. Mark Phillips case which
19 is identified on page one of Exhibit 2?

20 A. Hunts Point Ventures had agreed to show up and
21 fund Mark Phillips' litigation position in his
22 litigation with MOD Systems in exchange for an
23 assignment of Mr. Phillips' intellectual property. I
24 think the funding obligation on the part of Hunts Point
25 Ventures was capped at a million dollars.

1 Q. How were you going to be representing Hunts
2 Point? What specifically were you going to be doing to
3 advance the interests of Hunts Point Ventures in that
4 case?

5 A. Well, I don't know about advance their interests
6 in the sense of advancing their interest in the
7 litigation. I think the question is a little bit vague
8 on that point. So I'm not totally sure how to answer it.

9 More or less, Hunts Point Ventures, kind of like
10 an insurance company, had agreed to be the obligee --
11 beg your pardon -- the obligor on Mark Phillips'
12 attorney fee obligation. So, as a guarantor, we wanted
13 to have a retainer agreement with them directly, putting
14 them on the hook for those fees to fund Mark Phillips.

15 Additionally, they had dealings directly with
16 Mark Phillips, including but not limited to the
17 transaction involving the assignment of Mr. Phillips'
18 intellectual property in exchange for the extension of
19 credit associated with those attorneys' fees.

20 Q. Was Hunts Point Ventures a party in the Robert
21 Arnold v. Mark Phillips, et al. matter?

22 A. Not as I recall.

23 Q. Was Hunts Point Ventures a party in the A Dot
24 Corporation v. Anthony Bay case that's referred to on
25 page one of Exhibit 2?

1 A. Not as I recall.

2 Q. Do you recall the dollar amount that was paid to
3 you or your firm by Hunts Point Ventures pursuant to
4 Exhibit 2?

5 A. Pursuant to Exhibit 2?

6 Q. Yes.

7 A. No.

8 Q. Take a look, if you would, at paragraph five on
9 page two of Exhibit 2.

10 A. Paragraph two on page five.

11 Q. Paragraph five on page two of Exhibit 2.

12 A. Paragraph five on page two.

13 Q. Specifically, there is a sentence, the second
14 sentence in that paragraph, which reads, "We have agreed
15 that you will deposit a retainer in the amount of
16 \$50,000." Do you see that text?

17 A. I see that. I do.

18 Q. Do you know if that was paid?

19 A. As I testified before, I don't have an
20 independent recollection of whether or not that was
21 paid.

22 Q. Who would know whether or not that was paid?

23 A. Probably Laura Kimball, our law firm
24 administrator.

25 Q. How do you spell her name?

1 A. L-A-U-R-A.

2 Q. And the last name?

3 A. K-I-M-B-A-L-L.

4 Q. Was she the firm administrator at the time that
5 Exhibit 2 was entered into?

6 A. I believe so, but I don't specifically know.

7 Q. She's still working at Newman & Du Wors?

8 A. She is.

9 Q. Do you recall if you filed any pleadings on
10 behalf of Hunts Point Ventures in any of the three cases
11 which are identified in the first paragraph on page one
12 of Exhibit 2?

13 A. Can I have that question read back, please.

14 (Question read by the reporter.)

15 THE WITNESS: I don't believe so.

16 (Exhibit 3 marked for identification.)

17 BY MR. KIMBALL:

18 Q. Mr. Du Wors, you've been handed a document
19 marked as Exhibit 3. Have you ever seen this document
20 before?

21 A. Again, it looks familiar. Specifically, that it
22 may be or is the retainer agreement we entered into with
23 Hunts Point Ventures and Steve Schweickert for the
24 contingent fee patent litigation we did for them, but I
25 would have to compare it to the documents we have on

1 file back at the firm to tell you for sure that that's
2 what it is.

3 Q. Exhibit 3 purports to be dated May 23rd of 2011.

4 A. It sure does.

5 Q. You indicated a moment ago that there was an
6 agreement that you entered into concerning patent
7 litigation and Hunts Point Ventures. Was the agreement
8 that you recall entered into approximately on or about
9 May 23rd of 2011?

10 A. Sometime within that general approximate time
11 frame, I believe.

12 Q. Do you have any specific reason, sitting here
13 today, to believe that that is not your signature on
14 page five of Exhibit 3?

15 A. Yes.

16 Q. You do doubt that?

17 A. I don't have an opinion either way, but there
18 are plenty of reasons to believe that that is not my
19 signature.

20 Q. Sitting here today, do you believe that that is
21 your signature?

22 A. I don't have an opinion either way.

23 Q. Paragraph one on page one of Exhibit 3 is
24 titled, "Scope of Representation." It reads, "The scope
25 of our representation is limited to representing you in

1 the dispute. You hereby authorize us to file suit on
2 your behalf against digEcor and others based upon the
3 facts that you relayed to us." Do you see that?

4 A. Yes.

5 Q. Who was digEcor?

6 A. An entity that was the defendant in that
7 lawsuit.

8 Q. That's Hunts Point Ventures, Inc., v. digEcor,
9 which was pending in the Western District of Wisconsin?

10 A. I believe so. I don't recall where we filed
11 that claim. I think it's probably the Western District
12 of Wisconsin.

13 Q. You indicated just now that you filed a claim.
14 Were you the author of the complaint in that case?

15 A. I did not say that I filed a claim, so your
16 question misstates my prior testimony and contains
17 assumptions that are not true. My law firm did file a
18 claim on behalf of Hunts Point Ventures against digEcor,
19 and I don't know what you mean by author. But by this
20 time, at the firm, I was typically not the attorney in
21 charge of drafting initial pleadings. I would typically
22 review, revise, finalize and often even sign initial
23 pleadings and other documents in cases, but it has been
24 some years since I've been the initial author of
25 anything that's gone out of my office other than e-mail.

1 Q. Did you sign the complaint that was filed in the
2 Western District of Washington on behalf of Hunts Point
3 Ventures?

4 A. That question is objectionable on multiple
5 bases, including but not limited to the fact that it
6 assumes facts not in evidence and misstates my prior
7 testimony. My answer, subject to those objections, is
8 no.

9 Q. Can you describe, in your own words, what the
10 issues were in the Hunts Point Ventures v. digEcor case
11 that was pending in the Western District of Wisconsin.

12 A. The issues? I don't know. It was a claim for
13 patent infringement.

14 Q. Who was asserting that there had been a patent
15 infringement?

16 A. Hunts Point Ventures.

17 Q. What did they base the assertion that there had
18 been a patent infringement on?

19 A. A precomplaint analysis that my law firm had
20 conducted of the infringing nature of the accused
21 infringing device in that case.

22 Q. Who at your law firm participated in the
23 investigation of that analysis?

24 A. I couldn't tell you everyone that participated
25 in that investigation.

1 Q. Can you tell me the people you recall.

2 A. Myself and Derek Linke and probably others.

3 Q. Before taking on representation of Hunts Point
4 Ventures in the matter in the Wisconsin court, did you
5 contact digEcor concerning the allegations that were
6 being made about their use of Hunts Point Ventures' IP?

7 A. I don't think so. That would be an unusual
8 practice.

9 Q. Did you or your firm ever withdraw from
10 representation of Hunts Point Ventures in the case filed
11 in the Western District of Wisconsin as referred to in
12 Exhibit 3?

13 A. Withdraw? The matter was settled. So I don't
14 know if you characterize it as withdrawal when
15 representation terminates by virtue of settlement and
16 closure of a particular piece of litigation. But in any
17 event, the representation terminated by its own natural
18 causes.

19 Q. Was there a written settlement agreement between
20 Hunts Point Ventures and digEcor?

21 A. Yes.

22 Q. When did that occur?

23 A. I am not able to tell you that based on both
24 privilege and contractual confidentiality.

25 Q. When you are referring to privilege and

1 contractual confidentiality, can you be more specific
2 about why you are invoking or using those terms.

3 A. Well, my sources of information relating to the
4 resolution agreement with digEcor include the agreement,
5 itself, and my communications with representatives from
6 Hunts Point Ventures. Communications with
7 representatives from Hunts Point Ventures are
8 privileged. The settlement agreement is confidential.
9 I'm not allowed to talk about it.

10 Q. Is that pursuant to the content of the
11 agreement, itself?

12 A. The confidentiality provision within the
13 agreement, yes.

14 Let's take a break.

15 (Recess taken from 11:26 to 11:36.).

16 MR. KIMBALL: I'm going to mark this as
17 Exhibit 4.

18 (Exhibit 4 marked for identification.)

19 MR. KIMBALL: And this as Exhibit 5.

20 (Exhibit 5 marked for identification.)

21 MR. KIMBALL: Go back on the record.

22 THE WITNESS: When was the receivership
23 initiated?

24 MR. FRANKLIN: The receivership was initiated, I
25 believe, in the latter part of '13. November '13. Does

1 that sound right, Mark; do you remember?

2 MR. KIMBALL: Yes.

3 THE WITNESS: Well -- okay. If that is true,
4 then Exhibit 5 has no legal force and effect whatsoever.
5 Steve Schweickert can, you know, roll over in exchange
6 for his bribe as much as he wants to, but it doesn't
7 have legal effect with respect to Hunts Point Ventures'
8 rights.

9 Diana Carey, assuming this is an authentic
10 e-mail from her -- I guess, on that point, Mr. Kimball,
11 can I rely on your representation, as counsel in this
12 matter, that Exhibit 4 is an authentic e-mail from Diana
13 Carey, counsel for the receiver?

14 MR. KIMBALL: Yes, you can.

15 THE WITNESS: Just to make sure she knew, so
16 that it was knowing and voluntary, you provided -- your
17 office provided her with a transcript of my depositions
18 in the Jennifer Schweickert case, so she knew what kind
19 of questions were being answered.

20 MR. KIMBALL: I believe Mr. Wayman can answer
21 that question better.

22 MR. WAYMAN: She's been provided with
23 transcripts from Jennifer Schweickert's case and your
24 previous deposition as well.

25 THE WITNESS: What was my previous deposition?

1 I've only been deposed in the Jennifer --

2 MR. WAYMAN: I'm sorry. It was the Schweickert
3 case.

4 THE WITNESS: But both transcripts have been
5 provided to her.

6 MR. WAYMAN: Correct.

7 THE WITNESS: You can confirm that, Mr. Kimball?

8 MR. KIMBALL: I did not personally arrange for
9 their delivery, so I don't know.

10 THE WITNESS: Mr. Wayman from your office
11 provided my two deposition transcripts.

12 MR. KIMBALL: That's what he's indicated.

13 THE WITNESS: Did you read those transcripts
14 before you provided them?

15 MR. WAYMAN: Yes.

16 THE WITNESS: So you saw the provision where it
17 was agreed that they would be treated as attorneys' eyes
18 only for purposes of this litigation until a written
19 stipulated protective order was entered into, before
20 they were shared with anyone, including your client?

21 MR. WAYMAN: I don't believe that was in there.

22 THE WITNESS: No, it was in there.

23 So you just sent out transcripts from that
24 deposition in violation of the stipulation we entered
25 into to treat them as attorneys' eyes only.

1 MR. KIMBALL: I think we need to go off the
2 record to get the documents to inspect them.

3 THE WITNESS: Let's stay on the record.

4 MR. FRANKLIN: Finish what you're saying, John.
5 We're not going to take any action right now here. If
6 you believe you've got what you need on the record,
7 let's conclude that and then let's get on with the
8 deposition. I think you probably got what you want.

9 THE WITNESS: All right. Let's proceed.

10 BY MR. KIMBALL:

11 Q. Mr. Du Wors, you've been handed documents marked
12 as Exhibits 4 and 5, which I have just confirmed that
13 Exhibit 4 is an e-mail from Diana Carey to my office;
14 and Exhibit 5 is a document provided to us, signed by
15 Steven Schweickert, waiving rights and privileges to
16 documents and communications involving Hunts Point
17 Ventures.

18 Are you continuing to assert, as you did before
19 the break, that there is a privilege between you and
20 Hunts Point Ventures; and that you are invoking that
21 privilege with regard to questions concerning
22 communications between you and Hunts Point Ventures in
23 the representation issues that are referred to in
24 Exhibit 3?

25 A. Well, there certainly still is a privilege, but

1 I'm relying on your representation as a member of the
2 bar that indeed this is -- that Exhibit 4 is an
3 authentic e-mail from Diana Carey, effectuating a broad
4 and unconditional and unlimited waiver with respect to
5 the privilege associated with those communications.

6 Q. So turning back to the matter of the Wisconsin
7 Hunts Point Ventures v. digEcor case, you indicated
8 earlier that there was a settlement of the issues in
9 that case. Correct?

10 A. Correct.

11 Q. And your testimony is that there was a
12 confidentiality clause contained within the settlement
13 agreement that has just been referred to. Correct?

14 A. Correct.

15 Q. Was that a written agreement?

16 A. It was.

17 Q. Was the confidentiality clause contained in that
18 agreement subject to waiver by the parties, as you
19 understand them?

20 A. What do you mean, subject to waiver?

21 Q. So that the right to rely upon or invoke the
22 confidentiality provision in the settlement agreement
23 could be waived by the parties or a party who signed
24 that document?

25 A. As phrased, I don't think I understand your

1 question in the slightest. I think you're probably
2 conflating confidentiality as a feature of a written
3 contract with the attorney-client privilege in the hopes
4 of using Exhibit 4 as an excuse to inquire about the
5 substance and details of the settlement agreement
6 entered into between digEcor and Hunts Point Ventures,
7 but that would be legally erroneous.

8 Q. Do you believe that you are permitted or not
9 permitted to testify about the content of the settlement
10 agreement involving HPV and digEcor?

11 A. Not permitted. And it is not on the basis of
12 privilege.

13 Q. And specifically, it is on the basis of the
14 confidentiality clause in that document?

15 A. Correct. If it looks like most of them do,
16 you've got to give notice over to digEcor, and give them
17 a chance to object and be heard on motion before you can
18 get an order going into those agreements. Unless you
19 get them from the receiver, who, of course, has the
20 right to breach that confidentiality agreement as much
21 as he wants to.

22 Q. Is it your intention, then, not to answer any
23 questions concerning the settlement terms reached in the
24 HPV v. digEcor matter today?

25 A. Not without a court order or direction by Hunts

1 Point Ventures. Even in the case of direction by Hunts
2 Point Ventures, I'd have to look at the agreement to see
3 if that's allowed, or whether or not we have to give
4 notice of the inquiry to digEcor.

5 MR. FRANKLIN: Let me weigh in on this real
6 briefly. I think that even permission from HPV would
7 not be sufficient. My assumption is that this agreement,
8 like most of these, particularly when it's a company
9 like digEcor paying money -- they're the ones -- either
10 party -- in order to breach the confidentiality, you
11 have to get concurrence of both sides, I believe, is
12 typical, particularly -- it almost certainly would be
13 the case that you have to have permission from digEcor,
14 the payor, I believe. I can't tell you that I've read
15 the provisions here. So I believe that to be so. It
16 has been so represented to me.

17 BY MR. KIMBALL:

18 Q. Mr. Du Wors, when was the last time you looked
19 at the settlement agreement we've been discussing in the
20 last few minutes?

21 A. I don't recall.

22 Q. Is it your testimony that the agreement
23 contained a specific confidentiality clause?

24 A. Yes.

25 Q. Did you enter into any other agreements, either

1 oral or in writing, with Hunts Point Ventures, to pursue
2 any other patent infringement claims or cases?

3 A. I don't know whether we entered into additional
4 agreements with them.

5 Q. Do you recall if you represented Hunts Point
6 Ventures in any patent infringement matters other than
7 the case we've been describing involving digEcor?

8 A. I did.

9 Q. What were those cases?

10 A. Those cases included Hunts Point Ventures versus
11 Tonium, Hunts Point Ventures versus Research in Motion,
12 and Hunts Point Ventures versus Epson Corporation.

13 Q. Let the record reflect that, apparently, you've
14 opened and are looking at a laptop computer. Is that
15 correct?

16 A. Sure. Yeah. That's fine. I'm looking at --
17 I'm looking at the -- I'm looking at the transcript of
18 my first deposition in the Jennifer Schweickert case to
19 find the portion where you agreed to treat the
20 deposition as attorneys' eyes only.

21 MR. FRANKLIN: Let's defer that until another
22 time, please, John, so we don't delay this deposition.

23 THE WITNESS: I'm answering questions. Keep
24 asking them.

25 MR. FRANKLIN: All right. Go ahead.

1 BY MR. KIMBALL:

2 Q. Are you using your computer for the purpose of
3 refreshing your recollection relating to the questions
4 that are being interposed to you now?

5 A. No.

6 Q. With regard to the Hunts Point Ventures claims
7 against Tonium, what was the nature of those claims?

8 A. Patent infringement.

9 Q. Can you be more specific as to what was alleged
10 by HPV.

11 A. Infringement by Tonium of a patent owned by HPV.

12 Q. What kind of patent was this?

13 A. What kinds of patents are there?

14 Q. What did the patent concern? What technology or
15 process?

16 A. I don't recall. It was either the buffering
17 technology or the playlist technology.

18 Q. And the claim against Research in Motion, what
19 kind of technology or process was at issue in that case?

20 A. I believe, the playlist technology.

21 Q. And what was the technology or process involved
22 in the claim or case against Epson Corporation?

23 A. Buffering.

24 Q. Did HPV own the patents that were at issue in
25 those three controversies?

1 A. That question calls for a legal conclusion with
2 respect to the clouding of title. I have always
3 operated under the assumption that Hunts Point Ventures
4 did, at the time those claims were asserted, own title
5 to that intellectual property.

6 Q. You indicated earlier, with regard to Mark
7 Phillips and the criminal case in which you provided
8 some representation, that there was another attorney, I
9 believe named Peter Mair in that matter.

10 A. Correct.

11 Q. Did you attend the trial in that matter?

12 A. I did.

13 Q. Were you there every day of the trial?

14 A. I think so.

15 Q. Was that a jury trial?

16 A. It was.

17 Q. Again, that was before Judge Coughenour. Is
18 that correct?

19 A. Yes. For trial purposes. It was before other
20 judges for certain pretrial matters.

21 Q. Did you attend the sentencing hearing after the
22 jury had returned a finding of guilt?

23 A. No.

24 Q. Is there a reason why?

25 A. I felt that I didn't have a whole lot of value

1 to contribute to the sentencing hearing. I had
2 certainly never argued sentencing. I don't know the
3 criteria to be argued at a sentencing hearing. It was
4 Pete Mair's area of expertise. So he said it just made
5 sense for him to handle it, and I agreed.

6 Q. Did Mark Phillips ever discuss with you a
7 license agreement between him and a company called
8 Anything Box, Inc.?

9 A. Yes.

10 Q. What do you recall about the nature of that
11 discussion?

12 A. As I sit here, I sure don't remember much. I
13 would have to go back and read the documents at my --

14 Q. Do you recall --

15 A. I wasn't finished.

16 But my vague recollection is that Mark Phillips
17 had granted to Anything Box either a title interest or a
18 license interest to the intellectual property that later
19 became the subject of the contribution of title and/or
20 license to intellectual property to MOD Systems in or
21 about the fall of 2008 in exchange for the \$5 million
22 licensing fee that was promised to Mark Phillips. And I
23 think that because of the claim in interest by Anything
24 Box to that intellectual property, that one of the
25 things that that contribution and settlement agreement

1 did, in the fall of 2008, was to abrogate the Anything
2 Box license agreement, I think. But I am going off such
3 a fuzzy recollection, I really couldn't tell you without
4 looking back at those documents and agreements.

5 Q. Do you recall when you first became aware that
6 Mark Phillips asserted there was a licensing agreement
7 between him and Anything Box?

8 A. Do I recall when that took place?

9 Q. Yes.

10 A. No. I don't recall, with any specificity, when
11 Mark Phillips told me that.

12 Q. Do you recall if there was a claim by Mark
13 Phillips that the agreement provided for a one and
14 one-half million dollar payment to Phillips from
15 Anything Box?

16 A. From Anything Box?

17 Q. Yes.

18 A. I remember something relating to that. I don't
19 remember exactly what. I wonder if this is one of the
20 documents that we worried Mark had fabricated after the
21 fact in relation to the \$1.5 million transfer of funds
22 from MOD Systems that he was convicted of committing
23 wire fraud in association with.

24 Q. Are you aware if that conviction was upheld on
25 appeal?

1 A. I know that some of the claims associated with
2 the \$1.5 million were upheld on appeal. I think maybe
3 it was that the wire fraud claim was upheld, but the
4 mail fraud claim was not, based on failure of use of the
5 postal service. But the claim for -- I mean, the
6 criminal charges for -- you know, for some kind of
7 wrongdoing associated with the \$1.5 million were upheld
8 on appeal, at least some of them were; and I think maybe
9 new ones were added back in on appeal, because there was
10 an option of resentencing for Mr. Phillips, and a
11 possibility that Judge Coughenour would actually give
12 him more time. But I think Judge Coughenour declined to
13 give Mr. Phillips any greater sentence or punishment.

14 Q. Do you recall if Mark Phillips had communicated
15 to you his belief that production of a written licensing
16 agreement between him and Anything Box would be helpful
17 or he believed it would be helpful to his case in the
18 Federal District Court?

19 A. I believe that Mark Phillips, at minimum, told
20 me about the exculpatory nature of the obligation to pay
21 him \$5 million in the form of a license fee in
22 association with that transaction that took place in the
23 fall of 2008 with MOD Systems. I'm trying to remember
24 when that \$1.5 million was transferred into Mark's
25 account -- into his shadow account at Merrill Lynch, but

1 I would have to look at that Anything Box agreement to
2 remember more. If you showed it to me, I could probably
3 tell you more about what we discussed in association
4 with the agreement, given that it was so long ago.

5 I think that ultimately, what we argued to the
6 Court and the jury in numerous instances in the criminal
7 litigation was that the company owed Mark the money that
8 he took, the \$1.5 million; that he took that money on
9 account of money owed to him, and, therefore, it
10 couldn't be characterized as any kind of an act of
11 criminal wrongdoing for him to take that money.
12 Unfortunately, the Court disagreed with us.

13 Q. A moment ago, you referred to Mark having a
14 shadow account at Merrill Lynch. Do you recall that
15 testimony?

16 A. Yes.

17 Q. What did you mean by a shadow account at
18 Merrill Lynch?

19 A. I don't know if the institution was
20 Merrill Lynch or not. But whichever banking institution
21 it was, the financial institution had a particular kind
22 of account, and the brand name attached to that
23 particular financial product was a shadow account, and
24 Mark had one of those. It was the destination account
25 Mark used or allegedly used to transfer the \$1.5 million

1 of MOD funds associated with his condo purchase back in
2 2008 or 2009.

3 Q. Do you recall what the name was on the account?

4 A. For the shadow account?

5 Q. What you've characterized as the shadow account.

6 A. It's not my characterization. It's the
7 trademarked brand name attached by that financial
8 institution for the account. I'm not trying to use
9 pejorative terms to couch the nature of the account.
10 There is like an aggressive growth account and then
11 there is a shadow account. They just called it a shadow
12 account. I don't know why.

13 In terms of the account holder --

14 Q. Yes.

15 A. -- I don't recall. I would assume it's Mark
16 Phillips, but I don't have an independent recollection
17 of that. I suppose it might have been one of his
18 entities.

19 MR. KIMBALL: Can I get this marked as 6.

20 (Exhibit 6 marked for identification.)

21 BY MR. KIMBALL:

22 Q. Mr. Du Wors, in the last several minutes, we've
23 been talking about an agreement involving Anything Box,
24 Inc. and Mark Phillips concerning some IP. I've handed
25 you a document marked as Exhibit 6. Have you ever seen

1 this document before?

2 A. I don't know if I've seen this document. I've
3 seen an agreement with Anything Box.

4 Q. Do you have any reason to believe that Exhibit 6
5 is not a true and correct copy of the agreement that you
6 previously saw involving Anything Box?

7 A. I have no position either way.

8 Q. You have no reason to doubt its authenticity.
9 Correct?

10 A. I have no ability to doubt or confirm its
11 authenticity.

12 Q. Page two, Section 3, is titled, "Royalties and
13 Other Payments." Could you turn to that, please.

14 A. (Complies).

15 Q. Specifically, Section 3.1, which is titled,
16 "Initial Payment," reads, "ABI shall within 30 days of
17 the effective date pay to Phillips \$1,500,000 in
18 consideration of Phillips entering this agreement." Do
19 you see that?

20 A. I do.

21 Q. Do you recall having any discussions with Mark
22 Phillips about the \$1.5 million referred to in this
23 document having been paid to him?

24 A. I think, in the most general sense, yeah.

25 Q. What do you mean by "in the most general sense"?

1 A. There was a bunch of documents that were kind of
2 along these lines that Mark talked to us about or showed
3 us in various forms at one time or another. And I
4 remember the theme of a lot of our advice to Mark was
5 kind of consistent, which was either, A, it appears that
6 you produced this after the fact and that it is
7 vulnerable to arguments of forgery and manufacturing;
8 but more importantly, it has no legal significance.

9 Now, I'm looking at this document, for instance.
10 Assuming that it is authentic, I don't understand how
11 this would exculpate Mark Phillips in association with
12 the claims that the government brought for wire fraud in
13 association with the \$1.5 million. I don't know who
14 owns Anything Box or I don't recall. I think it was
15 Mark's company. And if this is a license agreement
16 between Mark Phillips and Anything Box, even if it was
17 executed in April of 2008, I can't figure out why that
18 would entitle Mark Phillips to put his hand in the MOD
19 cookie jar and transfer \$1.5 million to himself via the
20 wire transfer he ordered Kenn Gordon to effectuate.

21 Q. Did MOD enter into a merger or acquisition of
22 Anything Box?

23 A. I don't recall. I recall that Anything Box was
24 discussed, I think, in the fall of 2008 contribution and
25 licensing agreement entered into by and between Mark

1 Phillips and MOD Systems, the one that entitled
2 Mr. Phillips to a \$5 million payment.

3 Q. There have been several references, in the last
4 several moments, to a payment or wire transfer of
5 \$1.5 million. Do you recall that?

6 A. Yes.

7 Q. Again, so I'm clear, did Mr. Phillips argue or
8 assert that he was entitled to that money by virtue of
9 an agreement that had been entered into involving
10 intellectual property?

11 A. Yes. I mean, as I recall -- as I recall, MOD
12 Systems' board had voted to pay Mark Phillips not just
13 \$1.5 million, but I think substantially more than that --
14 maybe it was \$5 million, I'm not sure -- before the time
15 that he transferred those funds to himself or caused
16 Kenn Gordon to transfer those funds to his shadow
17 account for the purchase of his condominium. And
18 thereafter, the board, especially Anthony Bay and Bill
19 Bromfield and maybe others, dragged their feet on
20 actually paying that money to Mark Phillips, which kind
21 of jerked his chain, because he had obligated himself to
22 pay the down payment on a very nice condo over on the
23 Seattle waterfront in Belltown.

24 I don't remember why it was that the board was
25 dragging their feet, but as I recall, Mark was sick of

1 waiting for his money, so he went ahead and made the
2 order for Kenn Gordon to transfer those funds to him on
3 account of what it had been agreed the board owed him
4 associated with the intellectual property he was letting
5 MOD Systems use in order to do the Toshiba project,
6 which I think was the Green Box deal maybe. But later
7 on, after he gave the \$1.5 million back, finally I think
8 Mark used his pull with Toshiba to make Toshiba require
9 MOD Systems to execute that licensing agreement with
10 Mark Phillips; that Mark Phillips got the \$5 million
11 bonus he had kind of been waiting for, for a long time.

12 I think there was some kind of symmetry between
13 the \$5 million bonus from Toshiba and the amount of
14 the -- I'm sorry -- some kind of symmetry or connection
15 between the \$5 million license fee to be paid to Mark
16 and the amount that Toshiba was paying as a project fee
17 to build this technology that MOD Systems was building
18 for Toshiba, which I think was called the Green Box.

19 Q. A few moments ago, you used the term "our
20 advice" in discussing or responding to a question
21 concerning some documents and whether or not they would
22 be used or advantageous to Mark Phillips in his criminal
23 case. When you used the term "our," in "our advice,"
24 who would be the other individual or individuals that
25 you were thinking of?

1 A. Pete Mair. The problem is that Mark Phillips
2 kept showing up with documents in the course of handling
3 his criminal defense, and he would say, "Well, sure, I
4 had board authority to take the \$100,000," or, "I had
5 board authority to take the \$1.5 million." And what he
6 would show us is documents that looked like they were
7 created after the fact or were dated after the fact
8 and/or contained only the signatures of Mark Phillips on
9 behalf of some entity and Mark Phillips on behalf of
10 himself. The problem is a document Mark Phillips
11 executes on behalf of an entity or himself is not
12 legally binding to entitle him to take money from MOD
13 Systems.

14 Now, we argued in the litigation that it
15 shouldn't matter, because Mark Phillips had the power to
16 fire the entire board at MOD Systems, as well as the
17 entire officer team, and appoint himself as sole officer
18 and the sole board member, and thereby contract on
19 behalf of MOD Systems to pay him all of the money in MOD
20 Systems' bank accounts as a bonus for being such a great
21 CEO. He had that ability. The problem was that when he
22 transferred those funds, he hadn't done that. So he was
23 transferring those funds without the authority of MOD
24 Systems' existing board or officers other than himself,
25 and that was the basis upon which the Court denied our

1 dismissal motions, including a half-time motion, and
2 allowed the jury to convict Mr. Phillips.

3 Q. A moment ago, you used the term "showing up"
4 when you were describing Mark Phillips producing
5 documents. He would show up with documents. Isn't it
6 correct that he was actually in detention during the
7 pretrial and trial phase?

8 A. Not for all of it. There was an interim phase
9 there where Mark was out of jail. So when I first
10 showed up, Mark had been arrested at Chad Rudkin's
11 house, but he had been released on pretrial conditions
12 of some sort. He was rearrested for a while on the
13 claim or accusation that he had attempted to access, via
14 computer, the computer systems of the pretrial services
15 company that contracted with the federal courts for the
16 sake of, I guess, monitoring Mr. Phillips. He was then
17 released from that incarceration. There was some kind
18 of motion practice about it, and the result of that
19 motion practice was that Federal Magistrate Judge
20 Donohue ordered that for the duration of his pretrial
21 release, Mr. Phillips would not be allowed to have a
22 computer.

23 Thereafter, Mr. Phillips was rearrested when he
24 became the subject of a 911 call initiated by his, I
25 guess, then romantic partner, Eileen Acheson -- I

1 actually can't testify, Mr. Phillips and Mr. Wayman are
2 talking so audibly.

3 Q. Please continue.

4 A. Anyway, Mr. Phillips was staying at Mr. Rudkin's
5 house with an Eileen Acheson, who was then his romantic
6 partner, I believe the mother of his child. And
7 Ms. Acheson reported, in any event, that she had found
8 Mr. Phillips naked and unconscious on the floor of the
9 bathroom at Mr. Rudkin's house.

10 It later came out that, I guess, Mr. Phillips
11 had asked Ms. Acheson to bring home some computer
12 cleaner to Mr. Rudkin's house where Mark was staying
13 because Mark needed computer cleaner. I guess what
14 Ms. Acheson did not put together was that computer
15 cleaner didn't make any sense, because Mr. Phillips was
16 not allowed to have a computer anymore based on his
17 previous violation of the pretrial release.

18 So it was sort of a funny hearing that took
19 place at the federal court after that, also before Judge
20 Donohue, because I think that Dave Bukey, on behalf of
21 Mark Phillips, argued Mr. Phillips should be released
22 from incarceration; because although he, as Eileen
23 Acheson had reported, attempted suicide briefly by
24 virtue of huffing this computer cleaner, those suicidal
25 tendencies were not serious and they passed, they're

1 transient ideations, and he'll be fine, he won't try to
2 commit suicide. The prosecutors argued he should stay
3 in jail, because he's a threat to himself and danger to
4 himself generally, because his suicidal tendencies are
5 going to continue.

6 Then Judge Donohue kind of shut everybody down
7 and said, I have no idea why you guys are accusing
8 Mr. Phillips of being a threat to himself or attempting
9 suicide. He was clearly not attempting suicide. He was
10 using the computer cleaner as a hallucinogen because he
11 knew it wouldn't show up in a urine test. So that was
12 the conclusion of that. It was at that point that
13 Mr. Phillips was re-incarcerated for the duration of the
14 pendency of the pretrial period before his criminal
15 trial.

16 So there were months and months in there where
17 we were having out-of-incarceration contact with
18 Mr. Phillips.

19 Q. Do you recall if Mr. Phillips' request that you
20 either obtain or use the license agreement which has
21 been marked as Exhibit 6 came during a period in which
22 he was incarcerated or not incarcerated?

23 A. I have no such recollection on the subject.

24 Q. Was Exhibit 6 a document that was used at trial
25 in Mr. Phillips' criminal proceeding?

1 A. I don't recall. I'd have to check.

2 Q. Do you recall if Mark Phillips asked you to
3 obtain a licensing agreement involving himself and
4 Anything Box specifically for use at trial, before trial
5 commenced?

6 A. I don't have a specific recollection on that,
7 but certainly discussion of the intellectual property
8 that was the subject of the Anything Box license
9 agreement was something that we talked about.

10 Q. Did you contact anyone, prior to the trial in
11 Federal District Court, to try to get ahold of the
12 document?

13 A. I don't recall with specificity. We contacted
14 lots of people, Pete Mair and I and associated attorneys
15 at my firm, in the course of preparing for that trial
16 and gathering documents. I mean, there was a tremendous
17 volume of exhibits used at that trial and gathered for
18 possible use at that trial. So, I mean, I couldn't tell
19 you, with specificity, if we contacted anyone. We
20 contacted tons of people.

21 Q. Were there notes or records kept of who was
22 being contacted by you and/or other people at your
23 office?

24 A. We had lots of notes and records. I couldn't
25 tell you what the specific substance of them would have

1 been.

2 Q. Do those records still exist?

3 A. I don't know.

4 Q. If they do exist, where would they be located?

5 A. I don't know.

6 Q. Do you have a location where you keep notes and
7 records from former cases?

8 A. We keep notes and records from the former cases
9 in electronic form on our servers, in physical form in
10 our file cabinets, and in physical form at our document
11 repository called Iron Mountain. At least I think we're
12 still using Iron Mountain. We may be using another
13 repository service now. I just don't know.

14 Q. At any time prior to today's date, have you made
15 an effort to determine whether or not you have the notes
16 and records that we've been discussing concerning
17 pretrial preparation and Mark Phillips' criminal federal
18 court trial?

19 A. Your question is objectionable on the basis that
20 it presupposes I've done that on today's date, but the
21 answer is that as I recall, we scooped up all the
22 documents in all of our holdings that were associated
23 with Mark Phillips' representation and turned them over
24 both to you and to the receiver. I didn't lead the
25 effort on that production; rather we appointed personnel

1 at our law firm to do so. And my assumption, my
2 understanding, is that you guys have everything.

3 Q. When you say that you used personnel at your
4 office, who would that be specifically?

5 A. I don't know. You'd have to ask Derek Newman.
6 He would have directed those efforts.

7 Q. Did Mark Phillips ever discuss with you the
8 subject of who drafted Exhibit 6 or any other licensing
9 documents between himself and Anything Box?

10 A. I don't recall. I see 720 Third Avenue,
11 Suite 1100.

12 Q. Do you know what businesses are located at
13 720 Third Avenue, Suite 1100?

14 A. I think that's five blocks south of me on Third
15 Avenue. And we're at University. So I guess Seneca,
16 Spring, Madison, Marion, Columbia. I'm trying to
17 remember all the law firms that Mark Phillips has used.
18 I can't remember who is at 720. I don't know which
19 building that was.

20 Q. Have you ever heard the name Eric Prager?

21 A. I have.

22 Q. Who is Eric Prager?

23 A. Eric Prager is an intellectual property attorney,
24 working now, I believe, for K&L Gates out of their
25 New York office.

1 Q. Did Mark Phillips ever discuss with you using
2 Eric Prager or being involved with Eric Prager for
3 purposes of drafting any IP licensing documents
4 involving him?

5 A. IP licensing documents, no. Eric Prager told
6 me, in a conversation I had with Mr. Prager after
7 Mr. Phillips asked me to talk to Eric Prager, that
8 Mr. Prager was doing some IP strategy work with
9 Mr. Phillips. Neither he, nor Mr. Phillips told me what
10 that IP strategy work was, except that -- I believe that
11 Mr. Prager drafted for Mr. Phillips a demand for
12 something. Might be mediation, might be settlement, or
13 payment of royalty from Toshiba Corporation.

14 Mark had decided what he would do is send
15 Toshiba a notice that had been specified and dictated
16 under the provisions of the Freedom of Operation
17 Agreement that had been entered into by and between
18 Toshiba and either MOD Systems or Mark Phillips. I
19 don't remember which. That Freedom of Operation
20 Agreement, sort of a common agreement to see in these
21 settings, provided that if Mark Phillips ever concluded
22 that Toshiba was infringing his intellectual property,
23 he could send them a demand -- or rather had to precede
24 any lawsuit by a demand, which might trigger license fee
25 negotiations; but what he could not do, under any

1 circumstance, was sue them for an injunction.

2 These Freedom of Operation Agreements usually
3 function for the purpose of making sure that the party
4 that is accused of infringement will not experience a
5 business interruption by way of a suit for injunctive
6 relief by a patent rights holder. These were in the
7 pre-eBay days when patent plaintiffs could still get
8 preliminary injunctions and permanent injunctions
9 against infringement defendants. So if you did a deal
10 with a party that had a licensing component, a lot of
11 times they would want to include a Freedom of Operation
12 Agreement. So if there ever was a dispute about
13 infringement, the only remedy that could be sought by
14 the patent rights holder is some kind of a royalty fee.
15 That was indeed the nature of the agreement that had
16 been entered into by and between Mark Phillips on the
17 one hand and Toshiba on the other hand.

18 So anyway, Mark Phillips hired Eric Prager or
19 had Eric Prager send a demand pursuant to the provisions
20 of that Freedom of Operation Agreement.

21 Q. Did you ever discuss with Mark Phillips the
22 subject of bringing into court to testify as a witness
23 during the federal criminal trial, any witnesses who
24 could discuss the preparation of a licensing agreement
25 between Anything Box and Mr. Phillips?

1 A. I don't recall.

2 Q. Do you recall if Mr. Phillips asked you to
3 arrange for such a witness to come in and testify that
4 there was such an agreement?

5 A. What kind of a witness? To come in --

6 Q. A witness to verify --

7 A. I'm still talking. Please don't interrupt me.

8 You're asking if he talked to me about a witness
9 to come in and authenticate the validity of an agreement
10 entered into between Mark Phillips and Anything Box?

11 Q. That is not my question.

12 A. What is it?

13 Q. My question is, did Mark Phillips discuss with
14 you his desire or request that a witness come into court
15 at the criminal trial to testify that there was an
16 agreement between him and Anything Box concerning IP?

17 A. I don't recall. I'd have to review the records,
18 but I don't recall.

19 Q. So, sitting here today, you don't recall if he
20 had requested that or not?

21 A. Correct.

22 Q. Did you offer into evidence or seek to offer
23 into evidence what has been marked as Exhibit 6 today at
24 Mark Phillips' criminal trial in Federal District Court?

25 A. I don't recall. I would have to review the

1 transcript of that trial to see all of the exhibits that
2 we either entered or offered into evidence.

3 (Exhibit 7 marked for identification.)

4 BY MR. KIMBALL:

5 Q. Mr. Du Wors, you've been handed a document
6 marked as Exhibit 7, which I will represent to you are
7 pages from the Verbatim Report of Proceedings concerning
8 trial in the federal case that we have just discussed.
9 Specifically, I'd like you to turn to the third page of
10 Exhibit 7, which is actually numbered 76. Do you see
11 that?

12 A. I do.

13 Q. There is some discussion beginning at line 13 on
14 that page.

15 "Q. Thank you. Mr. Phillips, can I please
16 direct your attention to Exhibit D50 in the black
17 binders in front of you and also on the screen in front
18 of you. Do you recognize this agreement or do you
19 recognize this document?" Do you see that?

20 A. Yes.

21 Q. In fact, was that a question posed by you to
22 Mr. Phillips when he was on the stand?

23 A. I don't have a specific recollection.

24 Q. If you look at line three on the same page,
25 there is a statement or a line which reads, "By

1 Mr. Du Wors:" Do you see that?

2 A. The document speaks for itself. I see what
3 you're talking about.

4 Q. Do you have any reason to believe that the
5 question that I just read beginning at line 13 was not
6 posed by you?

7 A. I have no independent recollection either way,
8 as I sit here. My recollection would have to be
9 refreshed by reviewing the transcripts of proceedings.

10 Q. And you don't remember actually asking him that
11 question today?

12 A. As I sit here, I don't recall. I mean, the
13 question is, "Can I please direct your attention to
14 Exhibit D50 in the black binders in front of you and
15 also on the screen in front of you." You're asking if I
16 have an independent recollection of that question?

17 Q. Yes.

18 A. That is such a vanilla, non-specific, general
19 question, I have no independent recollection
20 specifically about that question. In fact, I'll bet you
21 I asked him something along those lines 100 times in the
22 course of that trial, because the black binders were our
23 binders and the white binders were the prosecution's.
24 That's how you got documents in at that trial. Please
25 direct your attention to the binders in front of you.

1 So I'm going to say that in some form or
2 fashion, I probably asked him and other witnesses that
3 at trial so many times, that to answer this question
4 you're posing to me right now, it would be like me
5 answering whether or not I used the word "the" during
6 that trial. No specific recollection, but I bet it
7 happened a lot.

8 Q. I'm going to object and move to strike as
9 non-responsive.

10 A. When is my opposition to that motion due?

11 Q. When it goes before the Court.

12 A. Okay. I hope to get a notice.

13 Q. Turn to line 19.

14 A. Okay.

15 Q. This appears to be an answer from Mr. Phillips
16 in response to your question, "What is this document,"
17 in which he states, "This is a licensing agreement
18 between myself and Anything Box."

19 He is then asked, "What is the date of the
20 document?" The answer given is, "April 25, 2008."

21 Then, on line 23, the transcript reads,
22 "Mr. Du Wors: Defense moves to admit Exhibit D50 into
23 evidence." Do you see that?

24 A. I see it.

25 Q. Do you have any reason to doubt or believe that

1 that did not occur as reported on page 76?

2 A. I have no position either way.

3 Q. Then the following line, line No. 25, reads,
4 "Mr. Swaminathan: Objection, Your Honor. This isn't
5 signed."

6 Then, on line two of the following page, which
7 is numbered 77, the Court rules, "Sustained." Do you
8 see that?

9 A. I see that exchange between Mr. Swaminathan,
10 Mr. Aravind Swaminathan, and the Court.

11 Q. Do you have any reason to doubt that this is not
12 an accurate reporting of that event?

13 A. I have no position on this either way. It
14 sounds vaguely familiar. Wait a minute. Just a moment.
15 Note this. Make a note in here.

16 MR. FRANKLIN: Note on mine here.

17 THE WITNESS: I'm noting it on yours.
18 Exhibit 7.

19 Just a moment. Okay. Go on.

20 BY MR. KIMBALL:

21 Q. Taking a look at Exhibit 7 -- specifically, page
22 numbered 76 -- you, I believe, answered at least part of
23 this inquiry a few moments ago -- but the reference
24 beginning at line 13, which is a question asking
25 Mr. Phillips to direct his attention to Exhibit D50 in

1 the black binders. Do you see that?

2 A. I do.

3 Q. And I believe you indicated that the black
4 binders were exhibits or proposed exhibits for trial in
5 the federal criminal case. Is that correct?

6 A. Correct.

7 Q. So Exhibit D50 in the black binders, that would
8 have been among defendant's exhibits or proposed
9 exhibits. Is that correct?

10 A. I don't know. I mean, I don't know what our
11 numbering system was. I don't recall.

12 Q. But you do not contest that as reported on lines
13 23 and 24, you sought to admit Exhibit D50 into
14 evidence. Correct?

15 A. Oh, I mean I -- I don't contest it. I don't not
16 contest it. I don't have personal knowledge to
17 authenticate the document marked for identification as
18 Exhibit 7. I couldn't tell you this is for sure real.
19 I couldn't tell you what Exhibit D50 was. I couldn't
20 tell you if Exhibit D50 was in our numbering system.
21 And I couldn't tell you what document I was talking
22 about without having the authenticated actual
23 transcripts and binders from that trial of both admitted
24 and offered exhibits. So I just don't know.

25 Q. Did you include, in defendant's proposed

1 exhibits, a signed copy of a licensing agreement between
2 Mark Phillips and Anything Box?

3 A. I don't recall.

4 I note that the details of the transaction were
5 apparently offered into evidence by way of Exhibit D57,
6 an e-mail between Bay, Bromfield, and Phillips,
7 outlining the terms of that licensing agreement.

8 Q. Was Exhibit D57 the same document as
9 Exhibit D50?

10 A. I don't know. I couldn't tell you.

11 Q. Do you recall what D57 was?

12 A. Nope.

13 MR. KIMBALL: I think now would be a reasonable
14 time to take a lunch break, as we discussed earlier.

15 THE WITNESS: Okay.

16 MR. FRANKLIN: That will be fine.

17 (Lunch recess taken from 12:30 to 1:09.)

18 MR. KIMBALL: Back on the record.

19 BY MR. KIMBALL:

20 Q. So we're back on the record after taking a lunch
21 break. Before the break, I had been asking you some
22 questions regarding Exhibit 6 and a license agreement or
23 document which is purporting or appears to be a license
24 agreement between Mark Phillips and Anything Box, Inc.
25 Just to be clear, Mr. Du Wors, is it your -- strike

1 that. Sitting here today, you don't recall whether or
2 not you ever saw a version of Exhibit 6 that actually
3 had signatures on it. Correct?

4 A. I would object on the basis that that question
5 misstates my prior testimony and assumes facts not in
6 evidence. My testimony is that I don't have a specific
7 recollection, as I sit here, as to whether or not I saw
8 any version of Exhibit 6 with or without a signature on
9 it.

10 I definitely recall having seen documents
11 relating to Anything Box, and I believe I saw an
12 Anything Box licensing agreement in some form or
13 fashion, but I would have to review the documents on
14 file back in my office to tell you for sure what I saw
15 and whether it had a signature.

16 Q. Earlier today, you expressed a concern that
17 Mr. Phillips might be generating documents or I think
18 you used the term backdating documents. Would Exhibit 6
19 fall into the category that you characterized
20 accordingly?

21 A. I don't know. I would have to see what I
22 actually had in my possession at the time relevant to
23 this case. So without doing so, I would be speculating.

24 Q. Were you ever given any documents by
25 Mr. Phillips which indicated that the license

1 agreement -- that any license agreement between
2 Mr. Phillips and Anything Box had been or would be
3 terminated?

4 A. I think that question is vague, and, therefore
5 only somewhat answerable. My answer being that my
6 recollection on that subject is pretty hazy. I do think
7 I saw documents generally relating to that subject
8 matter. To be sure, I would have to review the
9 documents at my office, after which I could tell you
10 what the substance of the documents were.

11 I think I testified earlier that it is the case
12 that I think the Anything Box license agreement entered
13 into by and between Mark Phillips and Anything Box was
14 terminated as a function of the fall 2008 contribution
15 agreement that entitled Mr. Phillips to a \$5 million fee
16 associated with his intellectual property.

17 MR. KIMBALL: Could I get this marked.

18 (Exhibit 8 marked for identification.)

19 BY MR. KIMBALL:

20 Q. Mr. Du Wors, you've been handed a document
21 marked as Exhibit 8. Could you take a look at that and
22 let me know if Exhibit 8 is a copy of the document that
23 you just referred to a moment ago?

24 A. I don't know. I don't recall. I'd have to look
25 at the documents at my office to tell you that

1 affirmatively.

2 Q. Taking a look at --

3 A. Let me take just a moment with this exhibit.

4 Go on with your questions.

5 Q. Taking a look at Exhibit 8 -- specifically, page
6 11 -- do you have any information which would lead you
7 to question whether the signature of David Douglass
8 appearing thereon is authentic?

9 A. As I sit here today, I have no opinion either
10 way.

11 Q. And you have no information to suggest that that
12 is not, in fact, a correct and true signature of
13 Mr. Douglass. Correct?

14 A. I have no knowledge either way.

15 Q. We paused the deposition for a few minutes as
16 you were going through the pages of Exhibit 8. As you
17 went through that document, were you able to refresh
18 your memory at all as to whether or not you've seen this
19 document before?

20 A. Well -- no.

21 Q. What was the purpose of going through the pages
22 of Exhibit 8?

23 A. To understand its nature and terms.

24 Q. Is it possible that you have a copy of Exhibit 8
25 in your office?

1 A. Within the boundaries of reality, anything is
2 possible.

3 Q. I take that as a yes.

4 A. You can take that however you want, but that
5 wasn't my answer.

6 (Exhibit 9 marked for identification.)

7 BY MR. KIMBALL:

8 Q. You've been handed a copy of a document marked
9 as Exhibit 9. Have you ever seen this document before?

10 A. I don't know.

11 Q. Specifically, page one of Exhibit 9 purports to
12 be an e-mail from Mark Phillips dated Monday, May 5,
13 2008, to Ron Braley, with a copy to Kenn Gordon. Do you
14 see that at the top of the first page of Exhibit 9?

15 A. I see that.

16 Q. Do you have any reason to believe that this is
17 not an accurate and true and complete printout of the
18 e-mail which is represented at the top of page one of
19 Exhibit 9?

20 A. I have no personal knowledge relative to that
21 question either way.

22 Q. There is a reference in the attachment line, in
23 that same portion of the first page, to, "Attachments:
24 Anything Box Incorporation Documents.pdf; License
25 Agreement Phillips ABI 05-08.pdf." Do you see that?

1 A. Can I have that question read back.

2 (Question read by the reporter.)

3 THE WITNESS: I see that.

4 BY MR. KIMBALL:

5 Q. Do you have any reason to believe that the pages
6 following the first page of Exhibit 9 and contained in
7 Exhibit 9 are not a true and complete copy of the
8 document which is referenced as the license agreement in
9 the line that I just described?

10 A. I have no personal knowledge responsive to that
11 question either way.

12 Q. Did Mark Phillips ever give you a copy of the
13 e-mail which is the first page of Exhibit 9?

14 A. I don't recall.

15 Q. Who is Kenn Gordon?

16 A. Kenn Gordon is an individual that Mark Phillips
17 is friends with.

18 Q. Is he associated or connected in any way with
19 the company called MOD?

20 A. I believe he was the acting chief financial
21 officer at MOD Systems.

22 Q. Do you know if he was also on the board of
23 directors?

24 A. I don't know. I don't think so.

25 Q. Who is Ron Braley?

1 A. Ron Braley is an attorney at Lasher Holzapfel.

2 (Exhibit 10 marked for identification.)

3 BY MR. KIMBALL:

4 Q. You've been handed a document marked Exhibit 10.
5 Will you please look at that document.

6 A. (Complies).

7 Q. Have you ever seen Exhibit 10 before today?

8 A. I'm not finished reviewing it.

9 Okay. What's your question?

10 Q. Have you ever seen Exhibit 10 before today?

11 A. I don't recall.

12 Q. Do you know if Mark Phillips gave you a copy of
13 Exhibit 10 prior to his criminal trial in federal court?

14 A. I don't recall.

15 Q. Do you have any information at your office that
16 would allow you to refresh your memory as to whether or
17 not you had this document prior to Mr. Phillips'
18 criminal trial in federal court?

19 A. I'd have to review my office's document holdings
20 to answer that question.

21 Q. Again, what would the documents you would be
22 looking at consist of?

23 A. The contents of our Mark Phillips file in both
24 electronic and hard copy form, whether that be at our
25 offices on our servers, or deposited within our holdings

1 at Iron Mountain or whatever repository it is we're
2 using these days.

3 Q. There is a reference in the line in the, it
4 looks like, forwarded e-mail from Kenn Gordon to Thomas
5 Grohman -- and this is about four inches down from the
6 top of the page -- and it reads, "Hi, Tom. I've
7 attached a draft of a proposed board consent, the stock
8 purchase agreement and the ABI Phillips license
9 agreement for everyone to review. Thanks, Kenn."

10 Do you see that text?

11 A. I do.

12 Q. Do you know what ABI is referring to there?

13 A. I would be speculating, but in the course of
14 speculating, I would guess that it was Anything Box.

15 Q. Who is Thomas Grohman?

16 A. I don't know.

17 Q. Do you know if there was a witness called during
18 Mark Phillips' criminal trial named Thomas Grohman?

19 A. I don't believe so. Oh. I see, from the upper
20 portion of Exhibit 10, that Thomas Grohman has an e-mail
21 address of GrohmanT@LanePowell.com. So my bet is that
22 Mr. Grohman is an attorney at Lane Powell, and that Lane
23 Powell served as counsel for MOD Systems during the time
24 period relevant to this e-mail, that being summer of
25 2008; in addition to, of course, Lane Powell's service

1 to MOD Systems as counsel for the Demand Review
2 Committee appointed to investigate Mark Phillips and
3 Anthony Bay in response to Bob Arnold's derivative
4 demand to MOD Systems.

5 Q. In light of those comments, do you have a
6 recollection at all as to whether or not Mr. Grohman was
7 called as a witness during the Phillips criminal trial?

8 A. I testified about this just a moment ago, and my
9 answer was no, I have no such recollection. But I don't
10 think that he was.

11 Q. Do you recall if you ever spoke with or
12 interviewed Mr. Grohman prior to the Phillips criminal
13 trial?

14 A. I have no recollection of any such conversation.

15 (Exhibit 11 marked for identification.)

16 BY MR. KIMBALL:

17 Q. You've been handed a document marked as
18 Exhibit 11. Do you recall if you've ever seen this
19 document before? Strike that. I'll rephrase.

20 Do you recall if you've ever seen the content of
21 Exhibit 11 before?

22 A. What's your question?

23 Q. Have you ever seen the content of Exhibit 11
24 before today?

25 A. I don't recall. I may have.

1 Q. The heading for the e-mail near the top of page
2 one of Exhibit 11 is addressed from Michael Morgan. Do
3 you see that?

4 A. I do.

5 Q. Do you know who Michael Morgan is?

6 A. No.

7 Q. Do you recall if you made any effort to speak to
8 or interview Mr. Morgan prior to Mark Phillips' trial in
9 Federal District Court?

10 A. I don't know.

11 Q. Did you keep a list of people that you
12 interviewed for the purpose of investigating Mark
13 Phillips' trial or the issues that would be coming up at
14 Mark Phillips' criminal trial in Federal District Court
15 regardless of whether or not those individuals were
16 ultimately called as witnesses?

17 A. I don't recall keeping a list denominated as
18 such. I believe that records in the form of my own
19 notes or Peter's notes would reflect whom we had
20 interviewed that we felt would be good as a witness at
21 trial.

22 Q. Do you recall if Mark Phillips asked you to
23 interview Michael Morgan?

24 A. I have no recollection of Mr. Phillips ever
25 asking me to do that.

1 (Exhibit 12 marked for identification.)

2 BY MR. KIMBALL:

3 Q. You've been handed a document marked as
4 Exhibit 12. Have you ever seen the contents of
5 Exhibit 12 before?

6 A. I don't recall.

7 Q. There is an individual referenced on Exhibit 12,
8 Kyleen Cane. Do you know who that is?

9 A. I do.

10 Q. Who is Kyleen Cane?

11 A. A woman -- I mean, a man -- I mean, I'm not sure
12 which gender.

13 Q. Do you know what they do for a living, this
14 individual?

15 A. I believe that Mr. and/or Mrs. Cane is a
16 securities lawyer or perhaps a business lawyer with
17 particular emphasis in securities.

18 Q. There is a reference next to the name Kyleen
19 Cane on Exhibit 12 of CaneClark.com. Have you ever
20 heard of a law firm called CaneClark?

21 A. I believe that is Kyleen Cane's law firm in
22 Nevada.

23 Q. Do you know if you sought to introduce
24 Exhibit 12 as an exhibit during the Mark Phillips
25 Federal District Court trial?

1 A. I don't have an independent recollection, as I
2 sit here, as to whether I did.

3 Q. Do you know if Mark Phillips gave you this
4 document prior to the trial?

5 A. I don't recall.

6 Q. Do you know if Kyleen Cane was a member of the
7 board of MOD at any time?

8 A. She was. He was. Whatever gender moniker is
9 appropriate for Kyleen Cane. That person was.

10 Q. Looking toward the bottom of the text portion of
11 Exhibit 12, there is apparently an earlier e-mail in
12 this chain of e-mails from Kyleen Cane to Mark Phillips
13 and Kenn Gordon, the text of which reads, "I have set up
14 a conference call board meeting for 1:30 to approve the
15 Anything Box transaction." Do you see that?

16 A. I do.

17 Q. Do you have any idea what transaction is being
18 referred to there?

19 A. Kyleen Cane has never told me, so I would be
20 speculating; but if asked to speculate, I would say that
21 was a transaction to acquire Anything Box as a
22 corporation by MOD Systems.

23 Q. Was Kyleen Cane called as a witness during the
24 Phillips trial?

25 A. Yes.

1 Q. By defendants or by the plaintiff?

2 A. Kyleen Cane was offered as a witness for the
3 prosecution.

4 Q. Did Kyleen Cane testify?

5 A. Kyleen Cane did.

6 Q. Were you in court during his or her testimony?

7 A. I was.

8 Q. Do you recall what the substance of the
9 testimony from Kyleen Cane was?

10 A. Generally, I believe Kyleen Cane testified as to
11 observations made by Cane during service on the Demand
12 Review Committee appointed by MOD Systems in response to
13 Bob Arnold's derivative demand.

14 Q. Do you recall if you conducted the
15 cross-examination of Kyleen Cane at trial?

16 A. I think Peter Mair did.

17 Q. In light of the answers you've given in the last
18 minute or so to my questions, does that refresh your
19 memory at all as to what gender Kyleen Cane was?

20 A. I don't know the specific details of Kyleen
21 Cane's gender. Kyleen Cane originally had been a man
22 named Michael Cane, and had changed his name to Kyleen
23 Cane at some point; and attended trial in women's
24 clothing and with physical attributes, including hair
25 and make-up, that one might normally associate with

1 female appearance. I was told by numerous sources that
2 Cane had undergone surgery of some kind associated with
3 gender reassignment, but I do not know the details of
4 those surgical procedures or the final outcome; or
5 whether Kyleen Cane would be identified legally as a
6 male transvestite or a gender-reassigned legal female,
7 and to what extent female appearance was something that
8 Kyleen Cane donned on a regular or part-time basis.
9 They are details I just never asked about, and I didn't
10 know then and I don't know now.

11 (Exhibit 13 marked for identification.)

12 BY MR. KIMBALL:

13 Q. Mr. Du Wors, you've been handed a document
14 marked as Exhibit 13. Would you take a look at that and
15 let me know if you ever recall seeing the content
16 thereof prior to today.

17 A. I don't recall whether I have or have not.

18 Q. Do you recall if Mark Phillips provided you with
19 either Exhibit 13 or -- strike that -- if he provided
20 you with the content which is reproduced on Exhibit 13
21 at the time of or prior to his criminal trial in Federal
22 District Court?

23 A. I don't recall.

24 You know what would refresh my recollection a
25 lot is if you could show me the e-mails or trial

1 transcript demonstrating when Mark Phillips transferred
2 \$1.5 million from MOD's account to his shadow account.
3 That would orient me a great deal and probably better
4 enable me to testify as to the information related to
5 these documents. So if you do have that handy, which I
6 suspect you do, please feel free to show that to me and
7 I may be able to give you more voluminous and specific
8 testimony.

9 (Exhibit 14 marked for identification.)

10 BY MR. KIMBALL:

11 Q. You've been handed a document marked as
12 Exhibit 14, which is titled, "Minutes of Meeting of the
13 Board of Directors of MOD Systems Incorporated, a
14 Washington State Corporation." Have you ever seen
15 either Exhibit 14 or the content thereof prior to today?

16 A. I don't recall.

17 Q. This document discusses a meeting of the board
18 of directors of MOD Systems, Inc., that was held on or
19 about June 20th of 2008. Do you recall ever discussing
20 with anyone, including but not limited to Mark Phillips,
21 what occurred at that meeting?

22 A. I don't recall.

23 Q. Did you have this document at the time of the
24 Mark Phillips criminal trial?

25 A. I don't recall.

1 Q. Was there any testimony that was elicited by the
2 defense at Mr. Phillips' criminal trial about the level
3 of his salary or compensation at MOD?

4 A. I believe so.

5 Q. What was the nature of that information?

6 A. I don't specifically recall. The things I do
7 recall were that Mark had been pretty severely underpaid
8 for a long time at MOD; and at some point, the board
9 resolved to increase his compensation, both prospectively
10 and, I think, pay him some amounts for a retrospective
11 pay increase. And I think the five million bucks they
12 ended up promising to pay him may have had something to
13 do with that. I think that this \$5 million that MOD
14 eventually agreed to obligate itself to pay Mark
15 Phillips was structured in that license agreement as a
16 license fee, but in essence, was contemplated by all of
17 the parties to compensate Mark Phillips for all the
18 stuff that he really felt he needed to be compensated
19 for in the past; partly for intellectual property,
20 partly for having been underpaid, partly for stuff he
21 had contributed in founding the company and being its
22 chief inventor for so long. You know, and I think he
23 had proposed a bunch of different transactions to get
24 him that money, and a bunch of accounts upon which that
25 money ought to be paid to him.

1 Ultimately, I think when he finally got
2 signature from MOD Systems, it was on a document called
3 License Agreement; but really, I think that there had
4 been discussions going on for a long time about how Mark
5 Phillips needed to be paid something more than he had
6 been paid for founding this company that everybody was
7 getting into. There was a lot of talk about different
8 ways to get him paid.

9 Q. Could you please look at the bottom of each of
10 the four pages comprising Exhibit 14. Specifically, I'm
11 referring to, "Grand Jury Material, Subject to Rule 6(e),
12 FOIA Confidential Treatment Requested." Then, over
13 toward the right at the bottom, MOD-DOJ 0029, and then
14 there are some other numbers.

15 A. Okay.

16 Q. Followed by -- it looks like a Bates stamp --
17 Phillips, with three zeros, and then a four-digit number
18 following the zeros. Do you see that?

19 A. I do.

20 Q. Does looking at any of that content refresh your
21 memory as to whether or not you saw Exhibit 14 before
22 today?

23 A. No.

24 Q. Have you ever seen other documents which bear
25 the footer, "MOD-DOJ," followed by a six-digit number?

1 A. Oh, I don't specifically recall. Do you mean
2 seven-digit number? No, it's six digits; isn't it? No,
3 I don't recall.

4 Q. Was that the footer that was applied or the
5 stamp that was applied to documents produced by the
6 Department of Justice in advance of the Phillips trial?

7 A. I don't know -- or I don't recall.

8 Q. Did your office use a Bates stamp protocol
9 similar to that appearing at the bottom of the four
10 pages of Exhibit 14, beginning "Phillips," followed by
11 seven digits?

12 A. I don't recall.

13 Q. Look, if you would, at page three of Exhibit 14.
14 There are a series of small case lettered paragraphs.
15 I'd like you to look at the small case lettered
16 paragraph marked (1), which contains a sentence reading,
17 "Resolved further, that the License Agreement (April 25,
18 2008), Development Agreement (April 9, 2008), and
19 Memorandum of Understanding (September 10, 2007), along
20 with subsequent amendments, with Toshiba Corporation are
21 hereby ratified." Do you see that?

22 A. I do.

23 Q. Do you know what that's referring to?

24 A. No.

25 Q. Was there any testimony elicited on behalf of

1 Mr. Phillips during the federal criminal trial about
2 whether or not there had been an agreement between
3 either Mr. Phillips or any company and Toshiba
4 Corporation?

5 A. Yes.

6 Q. What was the substance of that testimony?

7 A. I think there were multiple agreements. I doubt
8 I could remember all of them or all of their substance,
9 especially given the passage of time. But as I sit here
10 today, I think -- there were a couple of deals with
11 Toshiba. I think Toshiba paid a half million bucks for
12 some design work early on. I think that kind of got
13 Toshiba hooked on both Mark and his products. Although,
14 I think Toshiba had been hooked on Mark since 2007, when
15 he had breakfast with Kato-San and another
16 representative of Toshiba in Los Angeles.

17 But that initial consulting fee or services fee
18 or development fee, whatever it was, that led to a
19 couple of transactions, both -- I think a \$5 million
20 development fee, maybe in the summer of 2008, to build
21 out that Toshiba product, the Green Box -- I think it
22 was called the Green Box -- and then a Series A
23 financing that took place in the fall of 2008, where
24 Toshiba contributed some amount of money. It might have
25 been the five million; it might have been separate of

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1 the five million, I'm not sure. And as a result of that
2 Series A financing, Mark was going to get a chunk of
3 stock beyond what he already had. I think it was a
4 super majority, even afterwards -- both before and
5 after.

6 Mark was going to contribute intellectual
7 property. I think the Anything Box deal was going to be
8 killed, and Mark was going to contribute intellectual
9 property directly to MOD Systems. Toshiba would get
10 stock. Deluxe would get stock. NCR would get stock. I
11 think some individual board members like Bay might have
12 gotten some stock out of that thing, too. Mark was
13 going to get some cash.

14 There was a whole confluence of transactions
15 that occurred during that time period. But the end
16 result and end goal of the whole thing, I think,
17 ultimately, was that the Series A financing would be
18 effectuated. MOD would be funded to the tune of a bunch
19 of money. Mark would get the \$5 million he felt he was
20 owed for a bunch of different things. Mark would end up
21 something like a 71 percent shareholder in the company,
22 maybe a little less, but still a super majority.
23 Toshiba, NCR, and Deluxe would get their stock. Arnold,
24 Bay, and others would be diluted. That was the thrust
25 of it.

1 That by, you know, late fall of 2008, Series A
2 financing would be completed; and everybody would have
3 their stock and cash; and MOD would have the intellectual
4 property it needed from Mark to do its business,
5 especially its business for MOD -- I'm sorry -- for
6 Toshiba; and Toshiba would get the benefit of the
7 Freedom of Operation Agreement to make sure it never had
8 business disruption as a result of an infringement claim
9 from Mark.

10 Q. Look, if you would, at paragraph (g) on page
11 three of Exhibit 14.

12 A. Okay.

13 Q. There is a sentence there which reads, "Resolved
14 that Mark Phillips' annual salary as an officer of the
15 company is increased to \$250,000 effective 10/15/07."
16 Do you see that?

17 A. I do.

18 Q. Do you know if, in fact, his salary was actually
19 paid at the rate of \$250,000 per year, effective
20 10/15/07?

21 A. I don't have any independent personal knowledge
22 responsive to that.

23 Q. Was this issue brought up on behalf of the
24 defense at the trial, in any way, specifically referring
25 to Mr. Phillips' federal criminal trial?

1 A. I don't recall. I'd have to check. But the
2 transcript will tell you that.

3 Q. Do you recall if you ever made any efforts to
4 verify whether or not the \$250,000 level of salary had
5 been paid?

6 A. I don't recall.

7 (Exhibit 15 marked for identification.)

8 BY MR. KIMBALL:

9 Q. Mr. Du Wors, you've been handed a document
10 marked as Exhibit 15. Have you ever seen this document
11 or the content thereof prior to today?

12 A. I don't recall.

13 Q. Do you know if this document was made an exhibit
14 for the defense or for the prosecution in the Phillips
15 federal criminal trial?

16 A. I don't recall.

17 Q. The document is titled, "Minutes of the Meeting
18 of the Board of Directors of MOD Systems, Inc.,
19 September 17, 2008." Do you see that?

20 A. I do.

21 Q. If you look at the last page of Exhibit 15,
22 there appear to be two signatures dated September 17,
23 2008, one being Mark Phillips and Thomas Grohman. Do
24 you see that?

25 A. I see the language and markings you're

1 describing.

2 Q. Do you have any reason to believe that the two
3 signatures represented on the last page of Exhibit 15
4 are other than those of Mark Phillips and Thomas
5 Grohman?

6 A. I have no opinion either way.

7 Q. The content of Exhibit 15 appears to primarily
8 concern amended and restated articles of incorporation,
9 along with private placement of Series A preferred
10 stock, and then content license agreements and warrants.
11 Do you recall if any of those subjects were elicited in
12 any testimony or other evidence on behalf of the defense
13 at the Phillips criminal trial?

14 A. I generally recall those subjects being
15 discussed in testimony at the trial, yes.

16 Q. Can you give me a summary of what you recall the
17 testimony was?

18 A. As I recall, the testimony related to our
19 defense theory -- I mean -- you know, there was
20 testimony both offered by the prosecution and the
21 defense on that subject, but the testimony related to
22 our defense theory that on account of a bunch of stuff,
23 including underpayment and intellectual property
24 licensing, the company had agreed it owed Mark Phillips
25 money, including, but not limited to, five million bucks;

1 and the board, who we thought -- principally driven by
2 Anthony Bay -- whom we felt was kind of trying to screw
3 Mark, was dragging their feet on taking the necessary
4 steps to pay Mark Phillips his five million bucks.
5 Those steps potentially including, but not limited to,
6 execution of final agreements necessary to effectuate
7 that obligation, and also payment of that obligation by
8 wire, such that Mark Phillips, as CEO, took it upon
9 himself to make that payment to himself for a debt or on
10 account of a debt that was legitimately owed to him as a
11 contributor of a lot of value to MOD Systems, but not
12 because he was engaging in any kind of corporate theft
13 or wire fraud, and, therefore, could not be convicted of
14 the criminal charges being waged against him in the
15 context of that trial.

16 Q. Turn, if you would, to page ten of Exhibit 15.
17 Specifically, going down about a third or more of the
18 way on the page, there are four paragraphs which begin
19 with the word "Whereas" in capital letters. Do you see
20 those?

21 A. I do.

22 Q. So, in the first of those, the text reads,
23 "Whereas Mark E. Phillips, the president, chief
24 executive officer, chief technology officer, and a
25 director of the company, is the owner of, or has

1 exclusive rights to certain inventions, technology and
2 other intellectual property that is currently used by,
3 licensed to, or useful to the company." Do you see
4 that?

5 A. I do.

6 Q. Do you recall if there was any testimony about
7 that subject matter specifically during the Phillips
8 criminal trial in Federal District Court?

9 A. As I recall, generally, yeah.

10 Q. And do you recall who offered that testimony?

11 A. I know that we offered it. It may have been
12 offered by the prosecution as well. It was germane to
13 their culpability theory.

14 Q. What was their culpability theory?

15 A. Well, their theory was it didn't matter if Mark
16 was legitimately owed that money by MOD Systems or if
17 the company had agreed to pay it to him. The fact that
18 he took it without board resolution or transfer by
19 someone with authority at MOD to make that transfer, it
20 was still theft, even if the debt was legitimately owed;
21 even if the board later acknowledged, by way of executing
22 the contribution and licensing agreement, that Mark
23 Phillips deserved that money.

24 It was essentially a direct response to our
25 theory, which was that Mark wasn't stealing something

1 from the company; he was paying something the company
2 had already acknowledged was owed to Mark Phillips.
3 It's just that Bay was being a sleazy jerk and trying to
4 withhold that stuff from Mark, because Bay was always
5 trying to figure out ways to steal money and stock from
6 Mark; and also push Mark out based on jealousy and, I
7 think, anger that Mark was experiencing a growing
8 feeling that Bay's utility at MOD Systems was less than
9 he had originally thought.

10 Q. Look, if you would, at the following paragraph,
11 again beginning, "Whereas," which begins with the
12 sentence and reads, "The board had previously discussed
13 and approved at its July 9, 2008 meeting, the company's
14 acquisition of the Phillips IP by acquiring 100 percent
15 of the stock of Anything Box, Incorporated, a company
16 wholly owned by Mr. Phillips, that was to own certain
17 Phillips IP pursuant to the terms of a stock purchase
18 agreement and the acquisition of a license agreement
19 between Mark Phillips and the company for certain
20 Phillips IP." Do you see that?

21 A. I do.

22 Q. Do you recall if any testimony was offered on
23 that subject?

24 A. I think so, yeah. I generally recall that.

25 Q. Who offered that testimony?

1 A. What witnesses?

2 Q. Yes.

3 A. At least Mark. I don't know who else. I don't
4 recall who else.

5 Q. Was the testimony elicited by you or by
6 Mr. Mair?

7 A. Some would have had to have been elicited by me,
8 because I conducted the direct examination of Mark
9 Phillips. Mr. Mair may have also elicited the testimony
10 from other people.

11 Q. I believe you already indicated, in response to
12 my question, you don't recall if Exhibit 15 was offered
13 into evidence as a defense or prosecution exhibit. Is
14 that correct?

15 A. I don't recall.

16 (Exhibit 16 marked for identification.)

17 BY MR. KIMBALL:

18 Q. Mr. Du Wors, you've been handed a document
19 marked as Exhibit 16, which is comprised of, in the
20 first two pages, Minutes of Special Meeting -- which is
21 a document titled, "Minutes of Special Meeting of the
22 Board of Directors of MOD Systems, Inc., a Washington
23 State Corporation." Do you see that document?

24 A. I do.

25 Q. Do you recall if you've ever seen this document

1 before?

2 A. I don't.

3 Q. It appears, for the record, that, in fact,
4 Exhibit 16 is two copies, comprising four pages of what
5 is actually a two-page document.

6 A. If you say so.

7 Q. Look, if you would, at the first page of
8 Exhibit 16, under the heading, "Anything Box Agreement,"
9 at the paragraph which reads, "Whereas, the Board deems
10 it advisable and in the best interests of the company
11 and its shareholders to acquire Anything Box,
12 Incorporated, pursuant to which, among other things,
13 (a), the company would acquire 100 percent of Anything
14 Box stock as stated in the stock purchase agreement
15 attached hereto as Exhibit A; and (b), the company would
16 acquire that certain license agreement between Mark
17 Phillips and Anything Box attached hereto as Exhibit B,
18 the material provisions of which have been previously
19 discussed with each member of the board." And then it
20 goes on, which I won't read the rest of it.

21 Do you recall if, during trial, there was any
22 testimony offered by anyone concerning the subject
23 matter of the paragraph I've just read?

24 A. I think so.

25 Q. Do you recall specifically what that was?

1 A. Not specifically. I recall it generally.

2 Q. What is your general recollection?

3 A. My general recollection was that our defense
4 theory was that Mark Phillips had licensed intellectual
5 property to Anything Box, and was going to sell Anything
6 Box's shares to MOD Systems, I guess for some amount of
7 money that would have funded Anything Box's ability to
8 pay the license fee to Mark Phillips that was the
9 subject of that license Mark Phillips granted to
10 Anything Box; but that MOD Systems' board was dragging
11 its feet in some form or fashion with respect to that
12 transaction as a whole, and thereby not finalizing
13 whatever steps were necessary to get Mark Phillips his
14 \$5 million; and that as a result, even though the
15 company had agreed, one way or another, that Mark
16 Phillips would get paid that \$5 million, because they
17 weren't doing it, Mark took it upon himself to pay
18 himself a portion of what was generally agreed that he
19 was owed so that he could go buy the condo that Jan
20 Wallace had sort of coaxed him into buying. So he
21 transferred that \$1.5 million as his down payment on
22 that condo.

23 And that when the board objected because the
24 Anything Box transaction had not been finalized, such
25 that the company had not yet assumed its obligation to

1 pay him that money or had not yet taken the steps to pay
2 him that money, Mark Phillips transferred the money back
3 out of the shadow account into MOD's account to repay
4 it; and persuaded the company, perhaps with Toshiba's
5 help, to eventually finalize the written deal that
6 entitled Mr. Phillips to payment of that \$5 million,
7 which was memorialized in the October 2008 licensing
8 agreement as part of the Series A financing.

9 Q. Look, if you would, at the area just above the
10 paragraph I read and just to the right and below that
11 same paragraph. There appears to be some handwriting on
12 this document. Do you see that?

13 A. I do.

14 Q. Do you recognize that handwriting at all?

15 A. No. It's not mine.

16 Q. Did you ever talk about whether or not it would
17 be necessary to return to the board for final approval
18 about any of the matters that were referred to or
19 discussed in Exhibit 16?

20 A. No. I would assume that is the handwriting of
21 someone relevant to that transaction at the time as
22 opposed to litigation counsel after the fact. I don't
23 think that's me or Pete Mair or anyone like that. It's
24 probably Bill Bromfield or Anthony Bay or David Douglass
25 or Tom Grohman or someone else associated with the

1 transaction. It's not Mark Phillips' handwriting
2 either. And it's not Pete Mair's handwriting.

3 MR. KIMBALL: I'd like to take a break for about
4 five minutes.

5 (Recess taken from 2:03 to 2:12.)

6 (Exhibit 17 marked for identification.)

7 BY MR. KIMBALL:

8 Q. Mr. Du Wors, you've been handed a document
9 marked as Exhibit 17. Have you ever seen this document
10 before today?

11 A. I don't recall.

12 Q. Exhibit 17 is titled, "MOD Systems Incorporated
13 Written Consent for Shareholder Action in Lieu of
14 Special Meeting," and appears to involve, according to
15 the content, amended and restated articles of
16 incorporation, increase in a stock option pool,
17 placement of some Series A preferred stock, addressing a
18 question of conflict of interest transaction with Mark
19 Phillips, Mark Phillips' employment agreement, and makes
20 a provision for counterpart signatures.

21 Does any of that discussion in my question
22 refresh your memory as to whether or not you've seen
23 this document before?

24 A. No. The document sure is weird, though.

25 Q. How is it weird?

1 A. Warren Lieberfarb's signature looks forged by
2 Mark. It sure looks like Mark's handwriting. Also, I
3 thought I remembered that Warren Lieberfarb was off the
4 board by October 1, 2008, and I thought Robert Arnold
5 was, too. I thought by October 1, 2008 -- that's just
6 shortly before the Series A financing was finalized on
7 October 17, 2008 -- that the board was -- gosh, I think
8 Phillips, Bay, Carey, Kyleen Cane, maybe one other
9 person who is not reflected here. There is a lot of
10 quirks about this document. But okay.

11 Q. Turn, if you would, to the third page of
12 Exhibit 17.

13 A. Okay.

14 Q. There is discussion of conflict of interest
15 transaction with Mark Phillips. Do you see that?

16 A. I do.

17 Q. That section begins with the paragraph reading,
18 "Whereas, Mark E. Phillips, the president, chief
19 executive officer, chief technology officer, and a
20 director of the company, is the owner of or has
21 exclusive rights to certain inventions, technology, and
22 other intellectual property that is currently used by,
23 licensed to, or useful to the company."

24 Then it goes down, if you skip the next
25 paragraph, to the third paragraph under that heading,

1 and it says, "Whereas, Mark Phillips has agreed to
2 contribute to the company all of his right, title and
3 interest in and to certain of the Phillips IP pursuant
4 to the terms of a Subscription and Contribution
5 Agreement and Assignment attached to this consent as
6 Exhibit G, and to license certain other Phillips IP to
7 the company pursuant to the terms of a license agreement
8 attached hereto as Exhibit H," and then goes to provide,
9 "and the transactions contemplated therein, collectively
10 as the 'Phillips Transaction.'"

11 Do you recall if any of the subject matter I
12 have just questioned about was brought up at the
13 Phillips criminal trial in federal court?

14 A. Yeah, I believe it was.

15 Q. Which subjects specifically?

16 A. Well, you know, I think we've discussed this so
17 thoroughly. I'm really kind of repeating myself at this
18 point. Our defense theory was that Mark Phillips
19 felt -- and perhaps justifiably so -- that he was owed a
20 bunch of money for a lot of reasons. He had never been
21 paid much in the way of salary. He had never been given
22 much in the way of a cash payment for the intellectual
23 property that he contributed to MOD Systems. I think he
24 felt like he had given away too much stock for too
25 little to folks like Anthony Bay. And he persuaded MOD

1 Systems and its people that he needed to be paid
2 \$5 million.

3 They talked about a bunch of different ways to
4 structure that payment and a bunch of different reasons
5 that the payment should be made on account of.
6 Ultimately, what was negotiated was that the payment of
7 that money would be structured as a payment for the
8 acquisition of Anything Box that would fund the payment
9 Anything Box had contractually obligated itself to pay
10 Mark Phillips for the license granted to Anything Box.
11 I think they kind of drug their feet on that. Folks
12 like Anthony Bay and other members of the board drug
13 their feet on finalizing that Anything Box acquisition.
14 Eventually, they decided not to proceed with the
15 transaction to get Mark Phillips his five million bucks
16 as an Anything Box acquisition; rather they structured
17 it as a license and contribution agreement, coupled
18 together, associated with a Series A financing
19 transaction.

20 Q. All right.

21 A. I mean, that was our defense theory. They owed
22 Mark Phillips this money. They had said they were going
23 to pay him. They didn't want to finalize the deal by
24 signing off on it, but the board had approved it a bunch
25 of different times, a bunch of different ways. Then

1 when Mark Phillips transferred that \$1.5 million to
2 himself, he was just paying himself what he was owed,
3 which he had authority to do as the CEO. But the Court,
4 unfortunately, disagreed with us.

5 Q. A few moments ago, you questioned whether or not
6 the signature on Exhibit 17 had been forged;
7 specifically, that of Warren Lieberfarb. Do you recall
8 that?

9 A. Yes.

10 Q. And you questioned, I think, earlier today as
11 well, whether or not Mark Phillips had forged signatures
12 on other documents. Do you recall that?

13 A. I do.

14 Q. Has he ever admitted to you that he forged
15 signatures?

16 A. No. But my general recollection was that he
17 admitted, during the course of our criminal
18 representation of him, when preparing for trial, that he
19 had created and executed some number of documents after
20 the fact in order to either conjure up ratification or
21 approval for some of his corporate actions with respect
22 to MOD Systems. I mean, one example is obviously the
23 bank fraud stuff and the resolutions that he executed
24 purportedly on behalf of MOD Systems, that he brought to
25 the bank -- I don't remember the name of the bank -- I

1 think it was Wells Fargo, but it might not have been --
2 to try and freeze that \$12 million. Those were the
3 subject, obviously, of a bank fraud claim by the
4 government, because Mark Phillips lacked actual
5 authority to execute those documents on behalf of MOD
6 Systems. Because, of course, at that point, his shares
7 were the subject of a voting trust. So he didn't have
8 the ability to unilaterally fire the board and the
9 officers and appoint himself sole board member or one of
10 other board members that he was appointing so that he
11 could authorize himself to have the funds frozen.

12 Q. Was he convicted of bank fraud?

13 A. Thanks to me, no.

14 Q. Why do you say thanks to you?

15 A. I think we did a hell of a job on that claim and
16 in the trial in general; and as a result, the jury came
17 back and said no bank fraud conviction. I think a lot
18 of it had to do with my cross-examination of Larry
19 Gagness, after which Mark Phillips said to me openly in
20 the courtroom, "I love you."

21 Q. Have there been any third parties -- more
22 accurately, any individuals whose signatures have
23 appeared on documents that have been made exhibits to
24 today's deposition who have told you that Mark Phillips
25 forged their signature on any document?

1 A. No.

2 Q. Again, you do not recall today whether or not
3 you attempted to get Exhibit 17 or another version of
4 Exhibit 17 into evidence during the Phillips criminal
5 trial?

6 A. I don't have an independent recollection of
7 that, as I sit here today, but could probably give
8 better testimony after reviewing the documents in our
9 holdings at my law firm.

10 Q. Did you review any documents in preparation for
11 your deposition today?

12 A. I did not.

13 (Exhibit 18 marked for identification.)

14 BY MR. KIMBALL:

15 Q. Mr. Du Wors, you've been handed a document
16 marked as Exhibit 18, consisting of three pages. Have
17 you ever seen this document before?

18 A. I don't recall.

19 Q. This document, which is titled, "Agreement to
20 Terminate Prior License Agreements Between Mark E.
21 Phillips and MOD Systems Incorporated and Between
22 Mark E. Phillips and Anything Box Incorporated,"
23 contains, on the first page, at the second paragraph
24 beginning with the word, "Whereas," the following text:
25 "Whereas, prior to entering into the stock purchase

1 agreement, Phillips had licensed certain intellectual
2 property and technology to ABX under that certain
3 license agreement by and between Phillips and ABX, dated
4 April 25, 2008; and he had licensed certain other
5 intellectual property and technology to MOD under that
6 certain license agreement by and between Phillips and
7 MOD, dated April 23, 2007." Do you see that?

8 A. I do.

9 Q. Were the recitals contained in the paragraph I
10 just read brought up at all during trial in the form of
11 any written exhibits?

12 A. I think -- were the recitals brought up in
13 the -- that question is so vague, I don't know how to
14 answer it.

15 Q. I would also like to ask you -- a moment ago,
16 when I was reading the question, you were looking at
17 your phone again, as you are doing now. Are you using
18 the phone to refresh your memory as to the subject of
19 your testimony today?

20 A. I am not.

21 Q. Again, noting that you are using your telephone
22 as I am speaking, the question is, the content contained
23 in the second paragraph, beginning with the word
24 "Whereas" on the first page of Exhibit 18, contains
25 content which states that Phillips had licensed certain

1 intellectual property and technology to ABX under that
2 certain license agreement by and between Phillips and
3 ABX dated April 25, 2008. Do you see that language?

4 A. I believe so.

5 Q. Were any documents offered by you, on behalf of
6 the defense, at the Phillips federal criminal trial,
7 which supported the language contained in the recital
8 paragraph I just read?

9 A. I am able to tell you generally, based on my
10 current recollection, that we offered documents relating
11 to our defense that I've described before; specifically,
12 that the company, MOD Systems, had agreed to effectuate
13 payment to Mark Phillips in the amount of about five
14 million bucks on account of a bunch of different things.
15 Originally, they had agreed to structure it as an
16 acquisition of Anything Box, which was in receipt of an
17 IP license by Mark Phillips, and that later on, they
18 decided to do the transaction differently; specifically,
19 as a contribution of title and license rights to
20 intellectual property by Mark Phillips directly to MOD
21 Systems, in association with the October 17, 2008
22 license and contribution agreements, as well as the
23 Series A financing. And as a component of that, because
24 they changed directions on how they were going to
25 structure the transaction to get Mark Phillips that

1 money, they agreed to terminate the license by Mark
2 Phillips to Anything Box.

3 So we introduced a bunch of documents and
4 testimony related to that defense theory, specifically
5 being that because he was owed that money and they had
6 agreed for a long time that he was owed that money, when
7 he took the \$1.5 million for his new condo, he was just
8 paying himself what he was entitled to -- what the board
9 and everyone else had agreed he was entitled to, but
10 they hadn't finalized the paperwork necessary to pay him
11 yet.

12 So I couldn't tell you specifically what
13 documents were introduced in support of that theory at
14 trial without reviewing the clerk's minutes to see what
15 was offered and ultimately admitted by the Court, but
16 there was a bunch of documents relating to that theory,
17 a bunch of testimony relating to that theory. I don't
18 know if Exhibit 18 was one of those documents or not.
19 I'd have to check.

20 Q. Are you aware that you and/or your attorneys in
21 this matter have propounded discovery requests to
22 Mr. Phillips asking for documents?

23 A. Am I aware that we have propounded discovery
24 requests?

25 Q. Asking Mr. Phillips for documents.

1 A. I don't know.

2 Q. You don't know if you did or not?

3 A. No. I don't think so. I don't think I've been
4 in the loop on that.

5 Q. Have you reviewed any documents that were
6 provided through the discovery process by Mark Phillips
7 in this case?

8 A. I don't think so.

9 Q. Are you aware that either you or your counsel
10 provided to Mark Phillips, in the context of this case,
11 certain documents pursuant to discovery requests?

12 A. I'm generally aware that we've made production,
13 indeed.

14 Q. Did you review any of those requests or the
15 documents provided in response thereto?

16 A. Well, I've reviewed written discovery requests
17 in the form of interrogatories. I've reviewed answers
18 to those interrogatories. I think I've signed off on
19 them. I don't know whether we've reviewed written
20 inspection demands or requests for production of
21 documents. I know that what we've done internally at
22 the firm is produced everything in our holding relating
23 in any way, shape, or form to Mark Phillips, Hunts Point
24 Ventures, or any of the parties or claims at issue in
25 the case; and we turned that over kind of wholesale to

1 our attorneys, and left it to them to review for
2 privilege and produce to you all as necessary. So
3 whatever we had that could ever possibly fall within the
4 ambit of what should be produced in the case has been
5 produced to our lawyers. I assume they've given it to
6 you. And those efforts were led principally by Derek
7 Newman, with some help from me.

8 (Exhibit 19 marked for identification.)

9 BY MR. KIMBALL:

10 Q. You've been handed a document marked as
11 Exhibit 19. Have you ever seen this document before?

12 A. I don't recall.

13 Q. Again, this document is somewhat similar to the
14 document that was made an exhibit earlier today. It has
15 two stamps near the bottom right-hand corner of each
16 page, beginning "MOD-DOJ," followed by a six-digit
17 number; and then "Phillips," followed by a seven-digit
18 number. Do you see that?

19 A. I see those characters that you're referencing.

20 Q. Do those footers or those characters refresh
21 your memory as to whether or not you've seen these
22 documents before?

23 A. No.

24 Q. Do they refresh your memory as to whether or not
25 you or your office had received this document before?

1 A. No. I kind of remember something that looked
2 like this.

3 Q. Was the footer or Bates stamping, Phillips in
4 capital letters, followed by a seven-digit number
5 beginning with at least one zero, used in your office to
6 chronicle and to track documents that were used in the
7 Phillips criminal defense?

8 A. Oh, I don't know. I mean -- yeah, I don't know.

9 Q. You never saw a document with that Bates
10 stamping on it before?

11 A. I'm not saying that.

12 Q. So you're testifying that you don't know whether
13 or not that form of Bates stamping appeared on documents
14 in your office?

15 A. No. I mean, look, that form of Bates stamping
16 is so commonplace, it would likely be the Bates stamping
17 that would be used by any firm representing Mr. Phillips
18 in either criminal or civil litigation. Mr. Phillips
19 had a veritable barrage of law firms representing him
20 during the time period spanning 2006 and 2012. I
21 couldn't tell you if we did it, if Johnson Flora did it,
22 if Lasher Holzapfel did it, if Foster Pepper did it, if
23 DLA Piper did it, if Fenwick West did it, and I couldn't
24 tell you if it was for civil or criminal litigation. I
25 mean, obviously, this document, assuming its

1 authenticity, was used a bunch of different times, a
2 bunch of different ways, because it's got so-called
3 Bates-like stamps on it a bunch.

4 Q. Do you know if it was offered by plaintiff as an
5 exhibit at trial?

6 A. Offered by the plaintiff as an exhibit at trial?
7 What trial are you talking about was there that had a
8 plaintiff?

9 Q. Federal District Court.

10 A. Which case?

11 Q. The prosecution case.

12 A. Well, there is no plaintiff in that case. It's
13 a criminal case. You don't have plaintiffs. Those are
14 in civil cases.

15 Q. The plaintiff would be the United States.

16 A. Well, it's not the plaintiff. Are you talking
17 about Mark's criminal prosecution?

18 Q. Yes.

19 A. I have no idea if it was introduced. I'd have
20 to check the clerk's minutes to see if it was either
21 offered -- I'd have to check the transcript to see if it
22 was offered, and check the clerk's minutes to see if it
23 was admitted.

24 Q. Does the notation appearing at the bottom of the
25 first page of Exhibit 19, which reads, "United States v.

1 Mark E. Phillips, CR10-269JCC, Plaintiff's Exhibit
2 No. 308," refresh your memory?

3 A. No.

4 Q. Who is Jan Wallace?

5 A. A woman, ostensibly. I'm not sure what else
6 you're asking me.

7 Q. Did you discuss any actions or activities of Jan
8 Wallace with Mark Phillips as they may have related to
9 his liability or culpability at his trial?

10 A. Extensively.

11 Q. Can you give me a summary of what his claims
12 about Ms. Wallace were?

13 A. No. As phrased, that question is overbroad. I
14 could tell you the story of Jan Wallace's involvement,
15 at a very high level, and it would take a while. I
16 mean, it's up to you if you want to use your time that
17 way.

18 Q. Was Jan Wallace called as a witness by the
19 defense in the federal criminal prosecution?

20 A. No. We had no subpoena power over her.

21 Q. Why was that?

22 A. Because she lived in Arizona.

23 Q. Was her deposition taken in Arizona by you or by
24 Mr. Mair?

25 A. No. We had no deposition rights in that case.

1 Q. Did you seek the permission of the Court to take
2 her deposition in Arizona at any time?

3 A. No. I believe we relied on her -- I don't think
4 we were allowed to take her deposition at all. She was
5 a target letter recipient and represented by criminal
6 counsel. So she had the ability to take the fifth on
7 all matters until she entered into her amnesty agreement.

8 Q. Did she enter into an amnesty agreement?

9 A. As I understand it.

10 Q. Do you know when that agreement occurred?

11 A. I don't recall with specificity.

12 Q. Did Jan Wallace testify on behalf of the
13 prosecution in the federal criminal case?

14 A. She did.

15 Q. How long was her testimony?

16 A. I don't recall.

17 Q. Prior to her testimony, did you attempt to
18 interview her?

19 A. Did I? No.

20 Q. Do you know if Mr. Mair did?

21 A. I don't know.

22 Q. Is there a reason why you did not interview
23 Ms. Wallace?

24 A. I don't think I was allowed to talk to her. As
25 a criminal defendant in that matter, I don't think we

1 had a right to interview her.

2 Q. What are you basing your position that you
3 didn't have that right on?

4 A. I don't remember. That would have been Pete's
5 department.

6 Q. Did you consult with Peter Mair about whether or
7 not you did have the right to interview Jan Wallace?

8 A. I don't recall. I think I understood that no
9 one could talk to her or Kenn Gordon, because they were
10 target letter recipients in the case, represented by
11 counsel. I think the same was true with Doug Lower. I
12 think he was represented by some woman who was also a
13 public defense panelist.

14 Q. Did Doug Lower testify on behalf of the
15 prosecution at the Phillips criminal trial?

16 A. I don't think so.

17 Q. Did Kenn Gordon?

18 A. Yes.

19 Q. Did Kenn Gordon also have his own counsel?

20 A. I think so.

21 Q. Do you know who that was?

22 A. I don't.

23 Q. What efforts did you make, prior to
24 Mr. Phillips' trial, to interview Kenn Gordon?

25 A. None.

1 Q. Is there a reason why?

2 A. I don't think I ever thought that was an option.

3 Q. Did any of the testimony at the Phillips
4 criminal trial involve or concern payments made to Jan
5 Wallace?

6 A. Yes.

7 Q. What was the general substance of that
8 testimony?

9 A. Well, a lot of people testified about it. I
10 mean, you've got to remember, they flew up the guy that
11 owned Feel Good Watches down in Arizona to testify about
12 it. They interviewed Jan Wallace -- I mean, they
13 examined Jan Wallace on it. Of course, we examined Mark
14 on it -- I did. And the general -- I mean very
15 general -- substance of the testimony was that Mark
16 testified he was paying Wallace on account of consulting
17 services. The prosecution -- the government argued
18 through prosecutors that they were not legitimately on
19 behalf of consulting services, but rather Jan Wallace's
20 purported consulting services were a mask for Mark
21 Phillips to use company money to have Jan Wallace buy
22 him watches. I mean, that was it. That was the
23 conflicting testimony.

24 Mark would give money to Jan, \$10,000, \$20,000,
25 \$30,000, whatever it was. Jan would send it to Feel

1 Good Watches. Mark would say, these are for the watches.
2 Jan would give that money to Feel Good Watches, almost
3 all of it. I think Mark was owing them some money at
4 the end. They would send the watch up to Mark. You
5 know, some were Breguet. I want to say one of them
6 might have been a Cartier, but I'm not sure. Actually,
7 I think a Cartier was what the guy from Feel Good
8 Watches wore at trial on that particular day.

9 But Mark said, no, those funds I transferred to
10 Jan Wallace were for her consulting services; and the
11 watches she used that money to buy for me, Mark
12 Phillips, those were just gifts. And the prosecution
13 effectively painted a picture that it was not the case
14 that Mark Phillips was transferring that \$100,000 to Jan
15 Wallace as payment for her services and she just
16 happened, by coincidence, to be using it to transfer it
17 to Feel Good Watches to buy Mark Phillips gifts which
18 were then sent to him close in time to the time that he
19 transferred it to Jan Wallace. Instead, the jury found
20 that that constitutes the use and disposition of MOD's
21 funds by Mark Phillips to buy himself watches, and,
22 therefore, constitutes wire fraud.

23 Q. Do you recall the name of the individual who
24 worked at Feel Good Watches and appeared at trial to
25 testify?

1 A. No. But if it helps to find him, I remember he
2 was a New York Jew with a thick Brooklyn accent.

3 Q. And a Cartier watch?

4 A. And a Cartier watch. Because that was Judge
5 Coughenour's joke to him as he took the stand. There
6 had been all this talk of watches. The jury heard about
7 watches ad nauseam. When they finally got the CEO of
8 Feel Good Watches in there and he took the stand, Judge
9 Coughenour, who is a veteran trial lawyer and can't
10 resist starting testimony or examination with the kind
11 of joke a trial lawyer should make, turned to the
12 representative from Feel Good Watches and said, "So what
13 kind of a watch are you wearing?" And everyone laughed,
14 including the jury. And the representative from Feel
15 Good Watches said, it's a Cartier something or other.
16 Pete Mair who then cross-examined that individual, who
17 practices very much as a trial lawyer, the way that
18 Judge Coughenour did, asked of that representative,
19 "Where is that accent from?" And the witness said,
20 "Brooklyn, New York." But, of course, he was living now
21 in Arizona. So Pete Mair asked, "And is that a Brooklyn
22 tan?" Because he was kind of a pale Jewish guy with
23 kind of a sunburn. The witness said, "It's probably my
24 high blood pressure." And all laughed again.

25 Q. Did you interview this individual prior to

1 trial?

2 A. No.

3 Q. Did you attempt to interview him?

4 A. No. I don't think we even knew that he was
5 going to be put on the stand. Or at least I didn't
6 know. Pete might have known.

7 Q. Was there a pretrial witness disclosure from the
8 United States?

9 A. I don't recall. I think so.

10 Q. And you don't recall if he was listed there or
11 not?

12 A. Oh, I don't recall. I know that we wouldn't
13 have had subpoena power over him, because he was down in
14 Arizona, and the government flew him up and put him up
15 in a hotel for his testimony.

16 Q. But you chose not to interview him as well.
17 Correct?

18 A. I don't recall ever having been faced with that
19 decision. It probably would have been Peter Mair's
20 decision. I remember being very frustrated with the
21 criminal process, because I didn't have the broad
22 discovery rights that I would have as a civil litigator.

23 Q. Do you recall what city Jan Wallace was living
24 in, in Arizona, during the time that these watch
25 transactions were occurring?

1 A. No.

2 Q. Do you recall the City in which Feel Good
3 Watches was located?

4 A. No.

5 Q. Was there testimony offered at trial that
6 Mr. Phillips had had direct contact with the individual
7 representative from Feel Good Watches that you referred
8 to a few moments ago?

9 A. I don't recall. I think there might have been
10 an e-mail or two between Mark and that guy or someone
11 from Feel Good Watches. I think, at some point, Mark
12 had not paid his bill for the watch, for one of the
13 Breguet watches; and the guy from Feel Good had sent him
14 an e-mail, asking him to either pay or return the watch.
15 And I think Mark maybe wrote an apology e-mail and then
16 paid his bill.

17 Q. Was there an individual named David Douglass who
18 testified at trial?

19 A. David Douglass was an important character in
20 that litigation, and I have to assume he testified at
21 trial, but I can't remember what he looked like or what
22 his testimony was at trial. I assume, for that reason,
23 that Pete Mair must have examined him -- cross-examined
24 him.

25 Q. A little bit earlier this afternoon, I asked you

1 about Exhibit 19 and whether or not you had seen it
2 before.

3 A. Yes.

4 Q. And your answer was that you didn't have a
5 recollection one way or the other. Is that correct?

6 A. Well, I said that, but I also said it looks kind
7 of familiar. I think I saw something that looks like
8 this.

9 Q. Do you recall if David Douglass was questioned
10 about Exhibit 19 or about the existence of any
11 Independent Contractor Services Agreement between MOD
12 and Meteor International Group Corporation?

13 A. As I told you, I don't remember Douglass'
14 testimony at trial. I can't picture him as I sit here.
15 I do recall that in the context of the overall story of
16 Mark Phillips' trial, David Douglass had been brought in
17 as sort of a CFO to try to clean up the company to make
18 it ready for a Series A financing. You know, because
19 Mark had treated the company the way that founders treat
20 the company. They commingle their own assets and funds
21 with it. They live out of the company bank account.
22 They, when it starts to do well, use it for luxury
23 items.

24 That's all sort of fine and good in the very
25 early stages, but then when you're going to do an

1 institutional financing under the Series A that occurred
2 at MOD Systems, you have to bring in a professional CEO
3 who properly accounts for everything and creates a
4 founders account to debit for inappropriate expenditures
5 and things like that. Dave Douglass was that person.
6 He kind of came in and he said, I see these transfers
7 you're making to Jan Wallace, and we need an agreement
8 with Jan Wallace in place in order to legitimize wire
9 transfers that you're making to Jan Wallace, so go get
10 me an agreement with her. If I understand correctly,
11 Mark went and got an agreement with Meteor, because
12 Meteor was a company Jan Wallace owned. I think Mark
13 might have even formed it for her or paid a law firm to
14 form it for her.

15 Q. So was the --

16 A. I'm still talking.

17 Because previously, when there was not an
18 Independent Contractor Agreement in place sufficient,
19 from David Douglass' point of view, to legitimize those
20 financial transfers, all that Mark was getting to make
21 them seem legitimate was an invoice. But the company
22 that was invoicing was Wallace Black. I think Kenn
23 Gordon had wanted the invoice. The problem was that
24 Wallace Black, which was Jan Wallace's consulting
25 company, had her name on it -- had Jan Wallace's name on

1 it. That was problematic, because everybody on the
2 board knew that that was Mark Phillips' girlfriend. So
3 it didn't look like legitimate consulting services; it
4 looked like Mark Phillips was funneling money to his
5 girlfriend.

6 I'm looking at the date of this Meteor
7 agreement. It's June 3, 2008. Mark Phillips bought
8 those watches, made those wire transfers to Jan Wallace
9 for watches, I think in the months spanning January 2008
10 through April or May of 2008. It was in that time
11 period that Jan Wallace was sending him invoices to
12 satisfy Kenn Gordon from Wallace Black. Because the
13 problem with them being Wallace Black invoices and
14 having Jan Wallace's name on them when everyone knew she
15 was Mark Phillips' girlfriend -- because of that, Mark
16 Phillips changed the invoice to W. Black, put it in his
17 Adobe Acrobat program or whatever it was and modified
18 that agreement.

19 That, of course, came out in trial as another
20 source of my concerns about Mark Phillips' cosmetic and
21 dishonest modification of agreements or forgery of
22 documents to support his position at a given time. It
23 was after that, that David Douglass said I don't care if
24 there is invoices, we don't have an independent
25 contractor consulting services agreement in place.

1 I think, if I recall correctly, what Mark did at
2 that point was had some attorney form Meteor for Jan
3 Wallace. Of course, I see this document has an address
4 for Meteor being -- for MOD Systems being 720 Third
5 Avenue. That makes sense. Earlier, you and I were
6 talking about what business was it that resided at 720
7 Third Avenue, Suite 1100, because that was the address
8 for Anything Box. Turns out that's also the address for
9 MOD Systems. In 2008, that must have been before MOD
10 Systems moved into the Washington Mutual tower at 1201
11 Third Avenue, Suite 1000, I think. I think they were
12 taking up the whole tenth floor there.

13 Anyway, so Douglass came in and wanted an
14 Independent Contractor Agreement. I think Mark Phillips
15 caused this to be put together in an effort to make his
16 transfer of funds to Jan Wallace somehow okay.

17 Q. So, at trial, did Douglass testify about these
18 events and corporate governance questions?

19 A. I sure don't know how to better tell you what
20 I've told you several times before, which is that I
21 don't have an independent recollection of the substance
22 of Dave Douglass' testimony at trial, or even whether he
23 testified at all, and I still don't.

24 Q. And if he testified, you don't recall if it was
25 you or Mr. Mair that would have examined or

1 cross-examined him. Correct?

2 A. I feel almost sure that it would have been Pete
3 Mair that examined him. That's true for a number of
4 reasons. One, if I examine somebody, I generally
5 remember them. Because I have to prepare for that
6 examination, look them in the eye, and that leaves an
7 impression on you.

8 Two, Peter Mair spent a lot of time -- I mean a
9 lot -- with the law enforcement interview transcripts of
10 David Douglass, as well as his Grand Jury testimony.
11 Because during that preparation period, Pete Mair came
12 back to me a lot of times, saying Douglass says this and
13 Douglass says that, and here is what I think we can get
14 out of Douglass, et cetera, here is how Douglass factors
15 into all of this. So I think Pete Mair had taken on
16 Douglass as his witness, just as Mair had taken on
17 Wallace and Cane and the Feel Good Watches guy.

18 (Exhibit 20 marked for identification.)

19 BY MR. KIMBALL:

20 Q. You've been handed a document marked as
21 Exhibit 20, which appears to be an e-mail from David
22 Douglass -- strike that -- forward of an e-mail from
23 David Douglass to Mark Phillips, which in turn is
24 forwarding an e-mail from David Douglass to Mark
25 Phillips, copying Kenn Gordon. Have you ever seen the

1 content of Exhibit 20 before?

2 A. I don't recall.

3 Q. The second or earlier e-mail on the page, which
4 purports to have been sent Wednesday, August 13, 2008,
5 at 9:15 a.m., to Mark Phillips, copying Kenn Gordon,
6 from David Douglass, has text which reads, "Mark,
7 attached is the final version of the agreement we
8 discussed yesterday for Meteor/Jan Jardin. Please have
9 Jan sign. Also, please ask Jan to submit a revised
10 invoice (just one more invoice) for the \$50,000 that
11 requests \$25K be paid to Meteor and \$25K be paid to
12 Holman Cahill Garrett. The ICA allows for this." Then
13 there is a sharing website URL that appears below that.

14 Do you recall talking about the substance of the
15 text I just read with Mark Phillips at any time?

16 A. I don't recall. You did misread that message,
17 though. You said, "Just one more invoice," when, in
18 fact, the text from David Douglass says, "Just one
19 invoice."

20 Q. You are correct.

21 A. I don't recall whether or not we discussed this
22 e-mail. We knew and talked with Mark about the fact
23 that generally speaking, David Douglass had asked for
24 Mark to get an Independent Contractor Agreement in place
25 with Jan Wallace. I don't know whose suggestion it was

1 that it was Meteor that be formed as the performance
2 obligor on that agreement, but ultimately that was
3 decided, apparently.

4 And, of course, Mark had asked that his
5 attorney, Larry Garrett, at the law firm of Holman
6 Cahill Garrett, allow his -- Larry Garrett's trust
7 account to be used to funnel money through to Jan
8 Wallace for the purpose of purchasing those watches.
9 Mark Phillips had sent an e-mail to Larry Garrett, which
10 came out at trial, saying that he wanted to use Larry
11 Garrett's trust account to make those transfers, because
12 he really liked the confidentiality and attorney-client
13 privilege associated with his use of that trust account
14 as a payment conduit.

15 Q. Did Mark Phillips specifically use the words
16 "payment conduit"?

17 A. Pretty close. If that's not verbatim, it was
18 something pretty close to that. He definitely verbatim
19 mentioned how much he liked the confidentiality and/or
20 privilege associated with it.

21 Q. Did he tell you that he was using the account to
22 funnel money to Jan Wallace for purposes of getting
23 watches?

24 A. I believe he told us expressly that he was using
25 the account for purposes of transferring funds to Jan

1 Wallace. I think that he always maintained, in his
2 conversations with us, that he was sending that money to
3 Jan Wallace on account of consultant services. I don't
4 know that we ever challenged him on that. He told us
5 that that was the truth; and that even though he was
6 paying her amounts on account of consulting services and
7 they were the exact amounts she needed to go and buy him
8 watches that he knew from her she wanted to buy for him,
9 that they were still just for consulting services and
10 the watches were just gifts. That was what he always
11 told us. And it's our job to advise Mark as to whether
12 or not that theory is credible, not to try and convict
13 him, ourselves, as his defense lawyers.

14 Q. Do you recall when you had those discussions
15 with Mr. Phillips?

16 A. You know, it would have been from that six- or
17 nine-month period spanning the fall of 2010 through the
18 time of trial in or about May of 2011.

19 Q. I notice you're looking at your phone again.
20 Are you using that to refresh your memory as to dates or
21 any other subject in question?

22 A. No. I'm looking to see what time it is to see
23 how close we are to being in a reasonable position to
24 take a break. I'm also checking out an e-mail I just
25 got on that same case where I won the motion to compel.

1 Because they're now proposing dates to me for the
2 deposition I get to take as a function of my victory on
3 that motion to compel.

4 MR. KIMBALL: Why don't we take a break now.

5 THE WITNESS: Can we take ten?

6 MR. KIMBALL: Sure.

7 THE WITNESS: Thanks. I'm going to make a phone
8 call or two.

9 (Recess taken from 2:56 to 3:13.)

10 MR. KIMBALL: Back on the record.

11 BY MR. KIMBALL:

12 Q. Before the break, I had asked you some questions
13 concerning Exhibit 19, and you had also been testifying
14 concerning payments to Jan Wallace and some watches from
15 a store in Arizona. Do you generally recall those
16 subject matters?

17 A. Yeah. I don't know that your prefatory comments
18 necessarily accurately summarize my testimony, but I do
19 recall the testimony that I gave prior to the break in
20 relation to those subjects.

21 Q. Did you talk to Mark Phillips, at any point
22 prior to the trial or during his trial, regarding
23 whether or not there had been a reimbursement to the
24 corporation of the money that had been sent to Jan
25 Wallace?

1 A. I don't recall.

2 Q. Do you recall if you ever discussed whether Mark
3 Phillips had voluntarily reduced his compensation from
4 \$250,000 to \$150,000 to compensate for the \$100,000
5 payments that had been paid to Jan Wallace?

6 A. You know, I seem to remember some discussion and
7 even argument at trial that given what Mark Phillips was
8 owed in terms of the salary he was not paid, that the
9 amounts all came out in the wash.

10 Q. Do you recall if you had any discussions with
11 Mr. Phillips, before trial or during trial, concerning
12 the \$100,000 going into an attorney's trust account and
13 the reason for that was so it would go to Jan Wallace?

14 A. Well, that question is compound in nature. The
15 first part that you asked about the funds going into
16 Larry Garrett's trust account, that certainly was
17 something we discussed; and I believe that we discussed
18 that was so that those payments could be re- --
19 transferred again out of the Cahill trust account to Jan
20 Wallace, yeah.

21 Q. I believe you've answered this, because you
22 indicated that you didn't have a good recollection of
23 the substance of Douglass' testimony. But do you recall
24 if he was asked, by either the government or by you or
25 Mr. Mair, whether or not any of the payments to Wallace

1 had been made prior to 2009?

2 A. Can I have that question read back.

3 (Question read by the reporter.)

4 THE WITNESS: I don't recall.

5 BY MR. KIMBALL:

6 Q. Turn, if you would, to Exhibit 20 again.

7 A. Okay.

8 Q. Do you recall if that was, either in this
9 present form or in a different form, introduced as an
10 exhibit at the time or during Mark Phillips' trial?

11 A. I don't recall.

12 (Exhibit 21 marked for identification.)

13 BY MR. KIMBALL:

14 Q. You've been handed a document marked as
15 Exhibit 21. I'd like you to look at that and let me
16 know if you've ever seen it before.

17 A. It looks familiar. I don't specifically recall
18 it. But yes, I think I saw this.

19 Q. And it appears that this was originally an
20 e-mail sent by Aravind Swaminathan --

21 A. Swaminathan.

22 Q. -- at the U.S. Attorney's Office to Pete Mair,
23 who then forwarded it on to you and Charlotte Williams.

24 A. Okay.

25 Q. Do you have any reason to believe that you did

1 not receive the e-mail which forwarded the content of
2 pages one, two, and -- one and two?

3 A. I don't.

4 Q. Do you recall discussing the plea offer terms or
5 the content of Exhibit 21 with Mark Phillips?

6 A. Yeah. I think -- I know that we did, in fact,
7 discuss that with Mark.

8 Q. Where did that discussion occur?

9 A. It would have been down at the Federal Detention
10 Center in Tukwila or Sea-Tac.

11 Q. Was he in custody at the time that this was
12 received?

13 A. I don't know. I don't recall. I think so.

14 Q. Did Mr. Phillips agree, at any point, to a
15 guilty plea or to any sort of plea arrangement that
16 would have resulted in not going through with trial?

17 A. No.

18 Q. Did you ever discuss a counter-offer to the
19 terms that the U.S. Government was seeking in terms of a
20 potential plea agreement?

21 A. I think that Pete Mair discussed a counter-offer
22 with Mark.

23 Q. Did Peter Mair have any visits, to your
24 knowledge, with Mark Phillips at the detention center in
25 which you were not present after you became involved in

1 the case?

2 A. Yes.

3 Q. Do you know how many, approximately?

4 A. Two or more.

5 Q. Did you provide or give a copy of Exhibit 1 to
6 HPV or any person who was working for or at HPV?

7 A. I don't recall.

8 Q. Did you provide a copy of Exhibit 21 to the
9 Rudkins?

10 A. I don't recall.

11 Q. If you did provide a copy to the Rudkins or to
12 HPV, was there a reason why that would have been done?

13 A. I would be speculating, given that I don't
14 recall whether I did that or not.

15 Q. Did the Rudkins or HPV request a copy of any
16 communications that you had in your office concerning
17 plea agreements?

18 A. Not that I recall.

19 Q. Again, sitting here today, it is your testimony
20 that you do not recall if you gave a copy of Exhibit 21
21 to either the Rudkins or to HPV. Correct?

22 A. Correct.

23 (Exhibit 22 marked for identification.)

24 BY MR. KIMBALL:

25 Q. You've been handed a document marked as

1 Exhibit 22. At the top of that document, it reads,
2 forwarded message from Steve Schweickert; subject,
3 latest text from J.D. And then underneath, it says,
4 "Slowly inching our way to the goal line." Do you see
5 that?

6 A. I do.

7 Q. It appears to be, on the two-page document
8 marked as Exhibit 22, a series of text messages between
9 you and Steve Schweickert. Is that correct?

10 A. I don't know. I've never seen this before.

11 Q. You've never seen the text messages before?

12 A. I don't recall them. But I've certainly never
13 seen this document before. I don't remember the text
14 messages.

15 Q. Did you ever communicate with Steve Schweickert
16 about Mark Phillips' trial prior to or during the trial?

17 A. Constantly.

18 Q. Why was that?

19 A. Mark had made Schweickert, Rudkin, Lower, the
20 whole sort of HPV team his -- I don't know --
21 benefactors and support team during the course of that
22 criminal prosecution, including the trial. Hunts Point
23 Ventures, led by Steve Schweickert, was paying for my
24 work in the trial. They were closely monitoring it,
25 rooting for Mark more or less, and wanted lots of

1 updates on progress and whether he was going to come
2 out, and whether or not he was going to get a felony
3 conviction, wanting to settle the MOD Systems civil
4 litigation, and also thinking and talking about the
5 relationship between the civil litigation at MOD and the
6 trial. Steve Schweickert and Chad Rudkin, Chad's wife,
7 Elizabeth, other friends of Mark's from Mark's past and
8 social life were showing up at the trial to see the
9 entire thing, to sort of be there as Mark's emotional
10 support. You know, we were talking to all of them to
11 the extent we could without compromising Mark's defense.

12 Q. Again, if you would take a look at the content
13 of Exhibit 22, specifically the text messages or what
14 appear to be text messages going back and forth, can you
15 tell me what the subject matter of these texts were?

16 A. No. Except to say that my mention of de Bakker
17 must have had something to do with Mark's settlement
18 with MOD Systems.

19 Q. Who is de Bakker?

20 A. He was in-house counsel for MOD Systems. Mark
21 had hired him after he had been Mark's personal attorney
22 or maybe MOD Systems' personal testimony, maybe both,
23 when Derek de Bakker was at Foster Pepper.

24 Q. When was the Phillips trial -- when did it
25 actually occur? Do you recall the months or months and

1 year?

2 A. I think it was May 2011.

3 Q. And sentencing was when?

4 A. I think it was a couple of weeks after the
5 trial. So either May or June of 2011, I think.

6 Q. Do you recall if a presentence report, a PSR,
7 was done by the government, prior to sentencing?

8 A. I don't know. I didn't work on the sentencing
9 portion of the trial.

10 Q. Did you meet with any parole or probation
11 officers after trial?

12 A. No.

13 Q. At the time you were representing Mark Phillips
14 during the criminal trial, you were also doing civil
15 work, as I understand it, for HPV. Is that correct?

16 A. Can I have that question read back.

17 (Question read by the reporter.)

18 THE WITNESS: I don't recall. I don't know if
19 the patent infringement litigation had commenced as of
20 the time of the criminal trial. I think it had not. I
21 think that we did not begin our representation of HPV in
22 that patent litigation until after the trial was over,
23 because I was so consumed with the trial. So the
24 sentencing portion of the trial may have been still
25 taking place at the time that we commenced the patent

1 litigation, but the jury trial portion of it, I feel
2 pretty certain would have concluded before we started
3 work on that.

4 BY MR. KIMBALL:

5 Q. Prior to the criminal trial in federal court,
6 had you done any corporate or similar kind of
7 reorganization or other related work for HPV?

8 A. I don't think so. I think that Steve had other
9 lawyers in my firm do some really limited stuff. We had
10 done the intellectual property assignment at the end of
11 2010 and finalized the settlement early in 2011, but in
12 terms of corporate for Hunts Point Ventures, I
13 understand Steve retained Michael Spain of my office to
14 handle redemption of shares for Joyce Schweickert, but I
15 wasn't involved in that. Steve sort of left me alone to
16 focus on the criminal trial and didn't ask me to involve
17 myself in that. I really didn't do any work for Hunts
18 Point Ventures during that period at all. It wasn't
19 until after the criminal trial. Just because I was
20 pretty consumed and Steve was happy to leave me out of
21 it and go straight to Michael Spain to do that stuff for
22 him.

23 Q. Was Michael Spain an employee of the firm?

24 A. Yeah.

25 Q. Does he also have a profit sharing arrangement

1 or any kind of equity position in the company?

2 A. No.

3 Q. Did he in 2010 or 2011?

4 A. Not as far as I know.

5 Q. I believe, a moment ago, you pluralized your
6 response to indicate that other attorneys in the firm
7 may have done work. In addition to Michael Spain, can
8 you think of any other attorney at Newman or Newman &
9 Du Wors that did any corporate or similar work for Hunts
10 Point Ventures at any time?

11 A. At any time or prior to Mark Phillips' trial?

12 Q. Prior to Mark Phillips' trial.

13 A. Derek Linke assisted with the IP transfer, but
14 I'm not aware of Mr. Linke having had any role in either
15 the formation of HPV LLC or in the Joyce Schweickert
16 redemption agreement.

17 Q. Those would have been Michael Spain?

18 A. Correct.

19 Q. Any others?

20 A. No. That's all I can think of.

21 Q. Is Derek Linke still with the firm?

22 A. He is.

23 Q. Does he have any kind of equity or profit
24 sharing interest?

25 A. I don't think so, but I don't know. I don't

1 have visibility into the compensation packages of the
2 other lawyers in the firm, because I'm not an owner.

3 Q. Prior to the time that you represented Mark
4 Phillips in the criminal matter that we've been talking
5 about, did you provide any legal services for Steve
6 Schweickert?

7 A. No.

8 Q. Other than what you have described in the last
9 few minutes, did anyone at the firm provide any services
10 for Steve Schweickert?

11 A. I don't think so.

12 Q. Did you do an assessment, at any time, as to
13 whether or not representation of HPV and/or Schweickert,
14 by either you or the firm, would create a conflict with
15 your representation of Mark Phillips?

16 A. Yes.

17 Q. What did you do specifically to make that
18 determination?

19 A. Well, when Phillips and Schweickert approached
20 us about transferring Phillips' intellectual property to
21 Schweickert, we concluded that that transaction would
22 constitute a conflicting transaction, but that the
23 conflict was waivable. So we had Phillips and
24 Schweickert execute a conflict waiver -- Schweickert on
25 behalf of Hunts Point Ventures and Phillips on behalf of

1 himself individually -- to allow us to transfer title to
2 that intellectual property to Hunts Point Ventures in
3 exchange for the litigation funding obligation agreement.

4 Q. That was only with regard to that one agreement.
5 Correct?

6 A. I don't know. I don't know what it covered. I
7 mean, I think we had a conflict waiver signed with
8 respect to Hunts Point Ventures' payment of our fees for
9 representing Mark civilly and criminally as well.

10 Q. Other than the conflict waiver document that you
11 referred to a minute ago involving Jennifer Schweickert
12 and Mark Phillips, and Jennifer both individually and on
13 behalf of HPV, were any other written conflict waiver
14 documents signed by anyone involving Mark Phillips or
15 HPV?

16 MR. FRANKLIN: Object to the form.

17 THE WITNESS: Yeah. As phrased, that question
18 assumes a bunch of stuff that isn't true. It misstates
19 my prior testimony, and is unclear and incomprehensible.
20 BY MR. KIMBALL:

21 Q. All right. I'll rephrase it.

22 Were any other written conflict waiver documents
23 or agreements signed other than the one that you've just
24 identified involving Mark Phillips' representation?

25 A. I don't know how many documents those conflict

1 waivers appear in. There, at minimum, was one written
2 document entitled "Conflict Waiver"; and other provisions
3 may have appeared in other agreements, including but not
4 limited to retainer agreements. I just don't recall.

5 Q. Did you ever inform Judge Coughenour that your
6 firm had represented Hunts Point Ventures and that a
7 conflict waiver had been executed?

8 A. I don't know. I don't think it ever came up. I
9 think that -- I believe that we disclosed to the
10 prosecution -- and I think Judge Coughenour -- I know we
11 discussed certain aspects of it with Judge Coughenour --
12 that Hunts Point Ventures was paying Mark's -- or my
13 fees in association with Mark's criminal defense. In
14 fact, there was one point where Judge Coughenour came
15 down off the bench, when he was hearing all this stuff
16 about various condos and intellectual property, and
17 pulled me and the prosecutors and Pete Mair aside and
18 said, "I'm really concerned about the fact that he has
19 publicly funded defense counsel. What the heck is going
20 on here, and how are you getting paid, Du Wors?" I
21 said, "Hunts Point Ventures is paying me." But I said,
22 "Mark Phillips has transferred away all of his assets,
23 and he's now penniless, as far as we know."

24 Q. Was this during trial or before trial commenced?

25 A. That conversation was during trial. Because he

1 was having that conference in response to testimony that
2 he was hearing. I think it came up in the subject of
3 items discussed before trial as well.

4 (Exhibit 23 marked for identification.)

5 BY MR. KIMBALL:

6 Q. You've been handed a document marked as 23. Is
7 this the conflict waiver document you were referring to
8 a few minutes ago?

9 A. I don't recall.

10 Q. Can you look at it and then let me know.

11 A. Well, yeah. I mean, I am looking at it.

12 I would have to compare this with the documents
13 at my office, but this looks like at least one of the
14 conflict waivers we had the clients execute.

15 Q. Do you believe that there were more than this
16 one document?

17 A. I think so. I just don't recall.

18 Q. When did you first begin advising Mark Phillips
19 about issues relating to the criminal case and/or
20 investigation?

21 A. In or around the time that Dave Bukey withdrew.
22 I don't remember when that was. I want to say fall of
23 2010.

24 Q. So after August 1st of 2010?

25 A. I don't know. I don't recall.

1 Q. Were you advising Mark Phillips at all
2 concerning the criminal investigation or the criminal
3 matter in June of 2010?

4 A. I don't know. I mean, I just don't recall.

5 I think that I would have, at minimum, said to
6 him that a felony conviction would have impacts on his
7 litigation. So I probably would have been discussing
8 the criminal litigation to the extent that it bore any
9 relationship to his civil litigation or to litigation
10 for enforcement of his intellectual property by any
11 party.

12 Q. Were there any provisions in any of the bylaws
13 or member agreements for Hunts Point Ventures or any
14 other company in which Mark was an owner or part owner
15 that contained a clause requiring his removal in the
16 event he were convicted of a felony?

17 A. I don't know. I have no idea.

18 Q. Did you prepare any such documents?

19 A. No. I played no role in the preparation of
20 corporate documents for Hunts Point Ventures during that
21 time period. That was all Cairncross & Hempelmann. And
22 I played no role ever in the formation or corporate
23 governance of documents -- sorry -- corporate governance
24 for any entity owned by Mark Phillips.

25 Q. Do you ever recall discussing with Mark Phillips

1 an allegation concerning a rape-for-hire scheme
2 involving Jan Wallace's daughter?

3 A. I think that we discussed it in the most general
4 sense, but it never received a great deal of focus in
5 any of our discussions.

6 Q. Do you recall what the substance of that
7 discussion was?

8 A. No. Because that allegation had been disclaimed
9 by the prosecution prior to my appointment as
10 Mr. Phillips' criminal counsel. So it wasn't really an
11 issue in play. We didn't have a reason to talk about it.

12 Q. When you say appointment as his criminal
13 counsel, do you mean in the federal case that we've been
14 discussing today?

15 A. Correct.

16 Q. All right. Did Mark Phillips ask you to do any
17 investigation before it had been resolved or after it
18 had been resolved?

19 A. About the rape matter?

20 Q. Yes.

21 A. No.

22 Q. Did you ever interview or discuss the
23 allegations with Jan Wallace?

24 A. No. The allegation was not the subject of any
25 civil or criminal claim, and, therefore, did not, from

1 my point of view, deserve any attorney attention.

2 Q. Was this allegation ever brought up during trial
3 in the federal case?

4 A. No. I think it was the subject of a motion in
5 limine, actually. I think it was specifically excluded
6 from trial.

7 Q. Do you recall ever being interviewed by or
8 interviewing anyone at the FBI in which this allegation
9 was discussed?

10 A. No. I was not interviewed by anyone from the
11 Federal Bureau of Investigation, and we had no access to
12 interview anyone at the FBI, nor did I interview anyone
13 about that allegation; because once again, it was not
14 the subject of any claims or criminal charges being
15 asserted against Mr. Phillips.

16 Q. Do you know who Eric Lundvall is?

17 A. I do. I've never met him or seen him, but yes,
18 I know.

19 Q. What is your understanding of who he is and how
20 he is connected to Mark Phillips?

21 A. As far as I know, he was a friend of Mark
22 Phillips or purported friend of Mark Phillips. I guess
23 Eric Lundvall -- who sometimes went by Chris Lundvall,
24 if I understand correctly -- I'm not sure why he used
25 two different first names -- was the guy that had done

1 some work for Mark Phillips at MOD Systems, I think on a
2 consulting basis; and had started becoming romantically
3 involved with Chloe, the daughter of Jan Wallace. I
4 mean, the story went -- I have no personal knowledge --
5 but the story went that Eric Lundvall had collaborated
6 with Jan Wallace and Chloe -- I think, Chloe Jardine to
7 set Mark up by calling him to precipitate this
8 conversation, which conversation formed the basis of the
9 claim that Mark had offered to bribe Chris Lundvall or
10 Eric Lundvall for raping Chloe after her 18th birthday.
11 I never listened to that call or read a transcript of
12 it, so I couldn't tell you what was actually said on
13 that call.

14 Q. Did you ever have any laptop or other computers
15 belonging to Mark Phillips in your possession?

16 A. Yes.

17 Q. Do you recall the name brand of each of the
18 items?

19 A. No.

20 Q. Were they laptops?

21 A. I think we had a laptop of Mark Phillips'.

22 Q. When did you have that laptop?

23 A. Oh, I don't know. During the criminal
24 prosecution.

25 Q. Why did you have the laptop?

1 A. Mark wanted us to have it to try and retrieve
2 documents.

3 Q. So Mark Phillips gave you or allowed you to have
4 possession of the laptop. Correct?

5 A. Correct.

6 Q. And asked you to go through it to try to get
7 documents?

8 A. I don't remember his instructions in that
9 regard. But we were trying to find documents related to
10 his criminal defense. I think one of the places that we
11 looked was on the laptop, including for e-mails with Jan
12 Wallace.

13 Q. Did you have the password or passwords that
14 allowed you full access to the laptop?

15 A. I don't recall. I think the main person
16 investigating the laptop was Derek Linke. He's more
17 tech savvy than I am. I remember there were some
18 problems with the passwords. Mark Phillips used a bunch
19 of different passwords. I think he wasn't remembering
20 which one he was using for that laptop. I think,
21 eventually, we got access.

22 Q. Was any data lost during the time that you had
23 the laptop in your or your firm's possession?

24 A. Not to my knowledge.

25 Q. Was any data erased?

1 A. Not by me, and not to my knowledge.

2 Q. Did Derek Linke ever tell you that data had been
3 taken off?

4 A. No.

5 Q. Did he ever ask you about taking data off?

6 A. No.

7 Q. Did you hire any kind of a forensic expert to
8 examine the laptop to determine if there had been any
9 kind of data compromises or data removal?

10 A. No. Compromise of data was never a suggestion
11 that was raised during that time period or since, except
12 perhaps in this litigation.

13 Q. When did your firm first begin doing work for
14 Hunts Point Ventures?

15 A. Well, I think that we started receiving payments
16 from Hunts Point Ventures for Mark Phillips'
17 representation in early summer of 2010. I don't know
18 that I would consider that Hunts Point Ventures specific
19 work, though, although they probably were a co-client at
20 that point. Work for Hunts Point Ventures probably did
21 not begin until the IP transfer in the fall of 2010.
22 And then we did work for Hunts Point Ventures in the
23 form of the settlement agreement, because I think Hunts
24 Point Ventures became an indemnitor on that settlement
25 agreement in case Mark Phillips breached any of his

1 obligations under the MOD settlement agreement. And
2 then Michael Spain did the share redemption for Joyce
3 Schweickert. Beyond that, I don't think our
4 representation of Hunts Point Ventures occurred again
5 until we started bringing patent litigation suits.

6 (Exhibit 24 marked for identification.)

7 BY MR. KIMBALL:

8 Q. Mr. Du Wors, I've handed you or you've been
9 handed a document marked as Exhibit 24, which is titled
10 on the top page, "Hunts Point Ventures Nuclear Unit."
11 Do you see that?

12 A. I do.

13 Q. Have you ever seen this document before?

14 A. Yes.

15 Q. Can you describe generally what it is.

16 A. No.

17 Q. What is referenced or what is meant by the term
18 "nuclear unit"?

19 A. I don't know.

20 Q. Did you participate in the drafting of this
21 document?

22 A. Certainly not.

23 Q. I'm sorry?

24 A. Certainly not.

25 Q. Who drafted this document?

1 A. I don't know.

2 Q. Did anyone at your firm participate in the
3 drafting of the contents of this document?

4 A. I feel reasonably confident the answer is no.

5 Q. Did you ever talk to Mark Phillips about who
6 drafted this document?

7 A. Nope.

8 Q. Was Mark Phillips a shareholder in Hunts Point
9 Ventures?

10 A. Not that I'm aware of.

11 Q. Was he on the board of directors of Hunts Point
12 Ventures?

13 A. I've never known him to be one or ever had
14 anyone say that he was one.

15 Q. Did he have any kind of title, such as CEO, CFO,
16 CTO, anything like that?

17 A. Not to my knowledge.

18 Q. Was he ever listed in any document or identified
19 in any document as an officer of the company?

20 A. Not that I prepared or have seen. I think --
21 not that I'm aware of.

22 Q. So you've never seen a document which has
23 identified Mark Phillips as having any kind of role with
24 the company?

25 A. Not that I can recall.

1 Q. But you have seen Exhibit 20 before. Correct?

2 A. Since this litigation --

3 Q. I'm sorry, Exhibit 24.

4 A. Since this litigation commenced, I've seen
5 Exhibit 24.

6 Also, at some point in the year 2011 -- and I
7 don't know when -- Steve Schweickert sent me an e-mail,
8 and I think it had an MOU of some kind attached to the
9 e-mail. I didn't read it until this litigation
10 commenced. Steve sent me a lot of e-mails during that
11 period. I mean, the guy didn't have a job, and the Mark
12 Phillips affair was his entire hobby. So I got a lot of
13 e-mails. I didn't read all of them. But I did see, in
14 my e-mail account, that there was some message from him
15 attaching a document. It might have been Exhibit 24.
16 It might have been an MOU of some kind. I don't really
17 know. But I've seen Exhibit 24 since we've started this
18 case.

19 Q. Have you had any discussions with the Rudkins or
20 any of the Schweickerts regarding Phillips' role as a
21 shareholder or director at any time in the company?

22 A. Yes.

23 Q. What were those conversations?

24 A. I couldn't tell you with much specificity. I
25 think that the Rudkins have each told me and that

1 Schweickert has told me over the last few years, at one
2 time or another, that Mark Phillips was not a
3 shareholder.

4 Separately, I have told Hunts Point Ventures,
5 when Chad and Elizabeth were the heads of it, that my
6 firm would not be willing to prosecute patent
7 infringement claims on behalf of Hunts Point Ventures if
8 Mark was a figurehead that could be deposed or put on
9 the witness stand, because of his felony record, because
10 that would function as such a challenge to credibility
11 that it would be more of a barrier than I could stand
12 for a case that I was taking on a contingent-fee basis.

13 Q. When you refer to a case that you were taking on
14 a contingency-fee basis, were those the patent
15 infringement case or cases that you've talked about
16 earlier today?

17 A. Correct.

18 Q. Did you ever talk to Mark Phillips about whether
19 or not he thought he was a shareholder at Hunts Point
20 Ventures?

21 A. Once.

22 Q. When did that occur?

23 A. Mark Phillips came to my office with Chad Rudkin
24 to have a discussion about Mark Phillips' role in Hunts
25 Point Ventures following his release from prison. The

1 conversation took place, also, following Mark Phillips'
2 release from prison.

3 Q. And in addition to yourself, present were Mark
4 Phillips and Chad Rudkins?

5 A. Mr. Rudkin --

6 Q. Rudkin. I'm sorry.

7 A. -- was indeed present, as was Mr. Phillips.

8 Q. Anyone else from your firm?

9 A. Derek Linke may have sat in for part of the
10 meeting. I don't recall.

11 Q. Can you tell me the substance of the discussion
12 from Mark Phillips to you about his role in the company
13 going forward?

14 A. Well, I don't think it was as much to me as it
15 was to Chad. I mean, Mark Phillips was -- the substance
16 of his communications was that Mark Phillips was unhappy
17 that he was not a shareholder, officer, or a director of
18 Hunts Point Ventures, and that he wanted to be.

19 Q. What did Mr. Rudkin say about that subject
20 during the meeting?

21 A. I believe that Mr. Rudkin said that he didn't
22 feel it would work to have Mark be a shareholder,
23 officer, or director in Hunts Point Ventures; but that
24 he was not opposed to including Mark as a participant,
25 financially or otherwise, in the company's affairs by

1 making him an independent contractor with profit-sharing
2 rights.

3 Q. So not a shareholder, but essentially someone
4 kind of like an employee that would also get a share of
5 the profits?

6 A. Well, not an employee. Specifically, an
7 independent contractor. Because as an independent
8 contractor, he would not be a speaking agent for the
9 company, and, therefore, not somebody whose credibility
10 could be attributed to the company.

11 Q. Did you ever talk to Mark Phillips about whether
12 or not he could or should be a witness in the Research
13 in Motion matter?

14 A. No. Maybe. Maybe during that meeting. That
15 would have been the only time. I don't recall.

16 (Exhibit 25 marked for identification.)

17 BY MR. KIMBALL:

18 Q. Mr. Du Wors, there is a document which has been
19 handed to you marked Exhibit 25. Can you take a look at
20 that document and let me know if you've ever seen the
21 content thereof before.

22 A. Yeah. Hang on a sec.

23 Q. I note that you are again doing something with
24 your phone. Are you using the telephone to refresh your
25 recollection about this or any other matter today?

1 A. No. I just got a really, really important and
2 awesome set of e-mails and actually ECF decisions on a
3 summary judgment motion. In fact, if it didn't bother
4 you, I'd like to take a quick break and read those.

5 MR. KIMBALL: We can take a break for five
6 minutes.

7 THE WITNESS: Give me five.

8 (Recess taken from 3:57 to 4:04.)

9 MR. KIMBALL: Back on the record.

10 BY MR. KIMBALL:

11 Q. Mr. Du Wors, with regard to Exhibit 25, have you
12 seen this document before today?

13 A. I vaguely recall it.

14 Q. And this appears to be an e-mail from you to
15 Mark Phillips, with a copy to Derek Linke. Is that
16 correct?

17 A. It appears to be that.

18 Q. And it begins with the number one, "I don't
19 understand what the Freedom of Operation Agreement is";
20 and then is followed by two, "Putting the IP into a
21 holding company wouldn't keep them safe, because you own
22 the holding company." Do you see that?

23 A. I do. That would be the -- but I mean, that's
24 the text of the last e-mail in that string.

25 Q. Were those meant to be responsive to the prior

1 e-mail?

2 A. Yeah. I think so. I don't have a great
3 recollection of this e-mail. It comes from four and a
4 half years ago. But yeah, it seems to be.

5 Q. So there is text in the first paragraph of the
6 prior e-mail, the one that was sent on 5/22/2010 at
7 9:08 a.m. It reads, "We will end up destroying MOD in
8 this process, but we have to shut these people down,
9 because they won't stop until they get a judgment
10 against me and take my IP. So we have to move this to a
11 separate company, which I am doing now, company X, and
12 then use an agent to sue MOD customers." Do you see
13 that?

14 A. Uh-huh.

15 Q. As I look at that, do you know what is being
16 discussed here?

17 A. In the most general sense.

18 Q. What was that?

19 A. Well, I think the document speaks for itself. I
20 don't think I can summarize it better than the plain
21 text of the document does.

22 Q. Does it appear to be Mark Phillips' request that
23 he wants to move the IP to a separate company?

24 A. Yes.

25 Q. Then your response to that appears to be,

1 "Putting the IP into a holding company wouldn't keep
2 them safe, because you own the holding company." Do you
3 see that?

4 A. Yes.

5 Q. Did you have any discussions other than what I'm
6 seeing in these e-mails about MOD's IP and whether or
7 not there would be ways to either protect it or in which
8 Mr. Phillips could own it?

9 MR. FRANKLIN: I guess I'm going to object to
10 the form of the question, because I didn't understand
11 it. Maybe you did. So I'll stand down if you
12 understood the question.

13 THE WITNESS: The question is vague and somewhat
14 incomprehensible. I interpret the question to be one
15 that asks whether I discussed asset protection
16 strategies with Mark Phillips as they pertain to
17 intellectual property owned by Mark Phillips. Is that
18 what you want to ask me?

19 BY MR. KIMBALL:

20 Q. Specifically MOD. MOD's IP.

21 A. I don't know what you mean by MOD's IP. That's
22 clearly not the subject of this e-mail exchange.

23 Q. All right. What IP did this e-mail exchange
24 concern?

25 A. I can only assume that it would have related to

1 IP owned by Phillips. MOD doesn't need a judgment
2 against Mark Phillips to get MOD's own IP. So when Mark
3 Phillips says to me, "They are not going to stop until
4 they get a judgment against me and take my IP," that's
5 not something MOD Systems has to do, to get its own IP.
6 That's just silly talk. So I assume what they're
7 talking about is IP owned separately by Mark Phillips.

8 So what do you want to ask me about? Asset
9 protection strategies with respect to MOD's IP? Because
10 those conversations didn't occur. But there were some
11 asset protection conversations about Mark Phillips'
12 separately owned IP, which I later found out was the
13 subject of an exclusive license to MOD already, but I
14 didn't know that at the time.

15 Q. So with regard to the IP owned by Mark Phillips
16 that you just referred to, did you have discussions with
17 him other than the discussion going on in the e-mail
18 chain which has been reproduced as Exhibit 25?

19 A. Yes.

20 Q. Can you give me an overview of what he was
21 seeking to do and what your responses were to those
22 requests?

23 A. Well, there were a number of conversations, but
24 generally speaking, the conversation went as follows:
25 Mark and Steve came to me and said, "We want to protect

1 Mark's IP from MOD Systems and the government who might
2 seek it through a civil forfeiture associated with the
3 criminal prosecution. Can he transfer it to Hunts Point
4 Ventures or another entity to hide it?" My response was
5 that no, you can't just transfer intellectual property
6 or any other assets to a separate entity. Case in
7 point, my advice in response to his e-mail; putting the
8 IP into a holding company wouldn't keep him safe,
9 because you own the holding company. I said, if it was
10 put into an entity that you own or control, they can
11 still get that entity.

12 Later, I said to him and Steve, you can't just
13 transfer intellectual property to a different entity
14 without that entity paying fair consideration for that
15 asset, because that will be regarded as a fraudulent
16 transfer. So they asked me a lot of questions about how
17 they could just give it to Hunts Point Ventures with a
18 side deal for taking it back. My advice on all of those
19 questions was uniformly that no, that was not possible,
20 because he would have to testify truthfully about it in
21 a deposition.

22 So I did advise Mr. Phillips and Hunts Point
23 Ventures later that it would be a valid transfer if Mark
24 Phillips were to actually sell his intellectual property
25 to Hunts Point Ventures in exchange for either cash or

1 the extension of credit to fund Mark Phillips'
2 litigation efforts, provided there were no secret
3 sweetheart deals where Mark somehow got it back at the
4 end of the day, such that the transfer of consideration
5 was illusory in nature. That ultimately was what they
6 decided to do, which is why they hired us to transact
7 the sale of intellectual property to Hunts Point
8 Ventures, with no secret handshake, wink, wink, nod,
9 nod, gentlemen's agreements to transfer the IP back to
10 Mark Phillips or otherwise give consideration back to
11 Mark Phillips after his release from prison. Or if
12 those secret handshake deals did occur, nobody told me
13 about them.

14 (Exhibit 26 marked for identification.)

15 BY MR. KIMBALL:

16 Q. You've been handed a document marked as
17 Exhibit 26. Have you ever seen this document before?

18 A. Yes.

19 Q. Is the Steve referred to in this e-mail Steve
20 Schweickert?

21 A. It is.

22 Q. What was the purpose of sending Mr. Schweickert
23 this e-mail?

24 A. He asked me to send him an e-mail outlining how
25 patent trolling works so that he could use it internally

1 for business purposes, which business purposes included,
2 but were not limited to, raising money for Hunts Point
3 Ventures. He wanted a document that explained to him
4 how the non-practicing entity, patent enforcement,
5 revenue-generation activities would take place; so that
6 if asked by potential investors and other people, he
7 could say, "This is how we're making money."

8 Q. In this e-mail, which is dated April 10th of
9 2011, the third paragraph on the first page reads in
10 part, "HPV's buffering and playlist patents appear to
11 cover all portable video and audio players distributed
12 until 2009 and some distributed after. On Monday, we
13 will file an action for infringement of the buffering
14 and playlist patents against digEcor, which distributes
15 the portable media players offered to customers on most
16 commercial airlines. We will file our action in the
17 Western District of Wisconsin." Do you see that?

18 A. I do.

19 Q. And that is the case that, in fact, we discussed
20 earlier today. Correct?

21 A. Yeah. I don't think we filed it that quickly,
22 but yeah.

23 Q. I believe you testified that ultimately, there
24 was a settlement in that case?

25 A. Correct.

1 Q. And that the terms thereof are subject to a
2 confidentiality clause. Correct?

3 A. Correct.

4 Q. Did you ever discuss the outcome of that
5 settlement -- strike that -- the litigation and/or
6 settlement with Mark Phillips?

7 A. Not that I recall.

8 Q. At the time that the e-mail which has been
9 reproduced on Exhibit 25 was sent -- specifically,
10 May 22, 2010 -- do you recall who the members of the --
11 who the controlling parties were at MOD Systems?

12 A. Can I have that question read back.

13 (Question read by the reporter.)

14 THE WITNESS: By "controlling parties," do you
15 mean members of the C suites of officers?

16 BY MR. KIMBALL:

17 Q. Yes.

18 A. Anthony Bay and Derek de Bakker, but I don't
19 know of anyone else besides that.

20 Q. As of April 10th of 2011, do you recall who the
21 controlling parties were for Hunts Point Ventures?

22 A. Steve Schweickert.

23 Q. Did you ever have any discussions with Jim Smith
24 of Smith & Hennessey concerning whether or not Mark
25 Phillips would get a shareholder interest in HPV or an

1 equity interest in HPV?

2 A. I don't think so.

3 Q. Do you recall any discussions with Jim Smith
4 about Mark Phillips' efforts or desires to get 49
5 percent ownership control of HPV?

6 A. I don't recall that. I know that I've had
7 conversations with Jim Smith about Mark Phillips, but I
8 don't recall that specific conversation content.

9 Q. Do you recall any discussions with Jim Smith at
10 Smith & Hennessey concerning whether or not or how to
11 transfer the IP owned by HPV to Jennifer Schweickert?

12 A. I don't recall.

13 Q. Do you recall any discussion with Jim Smith
14 about a desire on the part of either Mark Phillips or
15 Jennifer Schweickert that Jennifer Schweickert would own
16 the IP then owned by HPV?

17 A. You know, I don't recall specifically. That
18 might have come up in the context of conversations Jim
19 Smith initiated with me after Mark Phillips contacted
20 him following Mark Phillips' release from federal
21 prison. Mark Phillips contacted Jim Smith kind of to
22 use him as like a -- I don't know -- a sounding board or
23 a mediator or something along those lines. And Jim is
24 friends with both me and Mark. So Jim talked to me
25 about possibly trying to broker some kind of resolution.

1 I think one of the things we may have discussed
2 was that Bob Arnold's estate had a judgment against Mark
3 Phillips for a lot of money. So Mark Phillips wouldn't
4 even be able to have some of the assets he was looking
5 for, such as ownership in Hunts Point Ventures or title
6 to the intellectual property at issue, because Bob
7 Arnold's estate would just take it by using the judgment
8 as judgment to levy.

9 Q. Was this conversation then after the period of
10 time in which the judgment had been obtained by the
11 Arnold estate?

12 A. I think so.

13 Q. When do you believe the judgment was entered
14 against Mark Phillips in that case?

15 A. I don't recall.

16 Q. Do you know what year it was?

17 A. I would be estimating very, very roughly that it
18 took place sometime in 2012 or 2013.

19 (Exhibit 27 marked for identification.)

20 BY MR. KIMBALL:

21 Q. Mr. Du Wors, you've been handed a document
22 marked as Exhibit 27. Have you ever seen the content of
23 this document before?

24 A. I don't recall it.

25 Q. There is a reference in this e-mail -- what

1 purports to be an e-mail from Steve Schweickert to John
2 Du Wors, with a copy to Chad Rudkin and Mark Phillips,
3 which reads, "John, Chad Rudkin and I will be at your
4 office at 4 p.m. for our strategy update meeting today.
5 Mark was unable to get authorization from pretrial
6 services and thus will not be attending." And then
7 parenthesis, "Chad is the vice-president of Hunts Point
8 Ventures."

9 If you look at the date next to the salutation
10 section, it says, "Friday, June 11, 2010, at 3:10 p.m."
11 Do you recall if such a meeting occurred on or about
12 June 11, 2010, involving yourself, Chad Rudkin, and
13 Steve Schweickert?

14 A. No.

15 Q. In the e-mail, there is a reference to a
16 strategy update meeting. Do you recall what the subject
17 or what that strategy update concerned?

18 A. Mark Phillips' civil litigation with MOD
19 Systems.

20 Q. Did you discuss that subject with Chad Rudkin
21 and/or Steve Schweickert sometime in June of 2010?

22 A. I'm sure that I did, but I don't independently
23 recall any specific instance of it.

24 Q. Was it your understanding that at that period of
25 time, that Chad Rudkin was vice-president of HPV?

1 A. No.

2 Q. Who did you believe was vice-president of HPV?

3 A. I don't think I had any belief on the subject.

4 Q. Did you believe that Chad Rudkin was not
5 vice-president of HPV at that time?

6 A. I don't think I had a belief or opinion on it
7 either way.

8 Q. I'm going to have some more questions going
9 forward, but I do want to go back and just touch on a
10 couple of things that I addressed at the very beginning
11 of the deposition today to wrap it up for today.
12 Specifically, a couple of questions.

13 You indicated earlier that you practiced law at
14 a law firm in Pasadena, as I recall.

15 A. Yes.

16 Q. Again, what was the name of that firm?

17 A. Hunter, H-U-N-T-E-R, Malloy, M-A-L-L-O-Y, and
18 Salcido, S as in Sam A-L-C-I-D-O.

19 Q. They were located in the City of Pasadena?

20 A. Yes.

21 Q. Do you know if they're still in business?

22 A. I think they are. I think that Frank Malloy has
23 retired. I don't know what the name of the firm is as a
24 function of his retirement.

25 Q. And you are still licensed as an active attorney

John Du Wors

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1 in the State of California. Is that correct?

2 A. I am.

3 Q. When you were working for Hunter Malloy &
4 Salcido, did you ever have an equity position in that
5 firm?

6 A. No.

7 Q. When you were working there, which I believe you
8 indicated was roughly a two-year period, did you live
9 down in the Pasadena area?

10 A. I did.

11 Q. What city did you live in?

12 A. South Pasadena.

13 Q. Have you ever used any names other than the name
14 you currently use, John Du Wors?

15 A. Yes.

16 Q. What names have you used?

17 A. When I was a teenager, I had an acting agent,
18 and I did a couple of commercials when I was a kid. And
19 I think that my mom convinced me that for the sake of
20 family privacy, I should have a stage name for those
21 television commercials.

22 Q. What was that stage name?

23 A. John Klein.

24 Q. How do you spell Klein or did you spell Klein?

25 A. It was either K-L-I-N-E or K-L-E-I-N. But that

1 was 20 years ago, and I don't think I ever used that
2 name after my 17th birthday.

3 Q. Since I didn't ask this question this morning, I
4 will ask it now. When is the last time you did any work
5 as an actor for television or otherwise?

6 A. Or otherwise?

7 Q. Stage, television, movies, anything.

8 A. Commercial-wise, I was in a Jolly Green Giant
9 vegetable commercial when I was 17. Print work, I was
10 the poster boy for the 1997 Seattle International Film
11 Festival. Stage work, I think I was in a graduate
12 school production of Shakespeare's Measure for Measure
13 at the University of Washington.

14 Q. You indicated this morning that your major was
15 English, as I recall.

16 A. Yes.

17 Q. Did you have a minor or some other involvement
18 with the drama department there?

19 A. Yeah, I minored in opera, and I spent a lot of
20 time and electives in the drama department.

21 Q. Are there any other lawsuits currently pending
22 against you other than the lawsuits involving
23 Ms. Schweickert and Mark Phillips?

24 A. Joyce Schweickert and that's it.

25 Q. Have you ever been charged with a crime?

1 A. I'm not answering questions like that. I've
2 never been convicted of a felony or crime of dishonesty,
3 which is what you can ask.

4 Q. Have you ever been convicted of any crime?

5 A. I'm not answering questions about that.

6 MR. KIMBALL: All right. So I'm going to order.

7 MR. FRANKLIN: Okay. We'll talk about -- I need
8 to get some dates from you --

9 THE REPORTER: Can we go off the record?

10 MR. KIMBALL: We can go off.

11 THE REPORTER: Are you reserving on this part?

12 THE WITNESS: Yes.

13 MR. FRANKLIN: Yes, we'll read it.

14 (Deposition adjourned at 4:28 p.m.)

15 (Signature reserved.)

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John Du Wors

October 10, 2014

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S I G N A T U R E

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I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof.

Signed in _____, Washington,
this _____ day of _____ 20____.

JOHN DU WORS

Taken: Friday, October 10, 2014

Re: Phillips vs. Du Wors, et al.
Cause No.: 14-2-03111-4 SEA
Donald W. McKay, RMR, CRR, CCR

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